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No.

In the Supreme Court of the United States

VARSHA MAHENDER SABHNANI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a presumption of jury prejudice arises when pervasive pre-trial publicity is "vivid" and "unforgettable," the trial "swiftly follow[s]" the defendant's arrest, and the defendant is found guilty on all counts, *Skilling* v. *United States*, 130 S. Ct. 2896, 2916 (2010), and, if so, whether a presumption of jury prejudice is irrebuttable.

RULE 14.1(b) STATEMENT

Petitioner is Varsha Mahender Sabhnani, a defendant-appellant below. Mahender Murlidhar Sabhnani was also a defendant-appellant below.

Respondent is the United States of America, the appellee below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Varsha Mahender Sabhnani, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-86a) is reported at 599 F.3d 215. The memorandum and order of the district court denying petitioner's motion for a change of venue (App., *infra*, 87a-96a) is unreported but is available at 2007 WL 2769487.

JURISDICTION

The judgment of the court of appeals was entered on March 25, 2010. A timely petition for rehearing was denied on May 12, 2010. App., *infra*, 97a. On July 22, 2010, Justice Ginsburg extended the time for filing a petition for a writ of certiorari to and including October 11, 2010. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION AND RULE INVOLVED

The Due Process Clause of the Fifth Amendment to the United States Constitution provides: "No person shall *** be deprived of life, liberty, or property, without due process of law ***."

Rule 21(a) of the Federal Rules of Criminal Procedure provides: "Upon the defendant's motion, the court must transfer the proceeding against that defendant to another district if the court is satisfied that so great a prejudice against the defendant exists

in the transferring district that the defendant cannot obtain a fair and impartial trial there."

STATEMENT

Petitioner Varsha Mahender Sabhnani and her husband, Mahender Murlidhar Sabhnani, were charged with federal offenses relating to alleged mistreatment of two domestic workers in their home. During the five months between their arrests and trial, the local media reported on the case relentlessly, in the most inflammatory and sensational terms imaginable. The thrust of the coverage was that petitioner and her husband were "millionaire slaveholders" and that petitioner had committed "monstrous" acts of "torture" and brutality.

The Sabhnanis moved for a change of venue, arguing that the pre-trial publicity prevented them from receiving a fair trial. The district court denied the motion. A jury found both defendants guilty on all counts, and the court of appeals affirmed. In approving the district court's denial of a change of venue, the court of appeals refused to apply a presumption of jury prejudice, as this Court has done on a number of occasions.

Three months after the court of appeals' decision, this Court decided *Skilling* v. *United States*, 130 S. Ct. 2896 (2010). *Skilling* makes clear that further review is warranted in this case, for two related reasons. First, *Skilling* clarifies the circumstances in which a presumption of jury prejudice is warranted, and those circumstances are present here. Second, *Skilling* left unresolved the question whether the presumption of prejudice is irrebuttable (the Court having concluded that no presumption arose in that case), and that question can and should be resolved

here (where the presumption does arise). At a minimum, the Court should grant the petition, vacate the judgment below, and remand for further consideration in light of *Skilling*, a highly relevant decision of which the court of appeals did not have the benefit at the time it issued its opinion.

A. Proceedings In The District Court

1. The charges

Petitioner and her husband were charged in a 12-count superseding indictment with forced labor, in violation of 18 U.S.C. § 1589(a); harboring aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(iii); holding a person in a condition of peonage, in violation of 18 U.S.C. § 1581(a); document servitude, in violation of 18 U.S.C. § 1592(a); and conspiracy to commit these offenses. The government's theory was that the defendants held two Indonesian domestic workers—Samirah and Enung—in a state of servitude in their Long Island, New York home, where they required the workers to labor for long hours and low wages and subjected them to inhumane treatment. The case was prosecuted in the Eastern District of New York, in Central Islip, Long Island. App., *infra*, 2a-4a, 16a-18a, 98a, 111a, 263a, 312a, 317a.

2. The pre-trial publicity

From the time of the Sabhnanis' arrest in May 2007 through their trial in October 2007, the case was the subject of unrelenting media coverage, fueled in large part by the prosecution's highly charged rhetoric.

a. At their initial appearance on May 15, 2007, the day after the arrests, the government described the allegations against the Sabhnanis in unusually

vivid and inflammatory terms. According to the prosecutor:

> [T]his particular crime is a crime of *incomprehensible brutality and violence and inhumanity*. The conduct that these Defendants engaged in was *absolutely monstrous*.
>
> It truly is a case of *modern day slavery*. And I know that typically when one hears the word slavery, there are images evoked of ancient pharaohs in Egypt or the Romans and the slaves that they kept, or even Africans who were brought over to the New World and to America and enslaved here.
>
> Nobody would ever think that right here on Long Island, human beings were being brought in from another country, being held and forced to perform domestic labor through threats of *violence, physical torture and restraint*.

App., *infra*, 99a (emphasis added). The prosecutor used similar language in describing how petitioner was alleged to have treated the domestic workers (at that time referred to as "Jane Doe 1" and "Jane Doe 2"):

> [I]t mainly was Mrs. Sabhnani who administered the beatings to Jane Doe #1. And we're not talking about a mere beating with a slipper or a slap of the hand.
>
> This Defendant – Mrs. Sabhnani – *systematically, repeatedly, viciously attacked* Jane Doe #1. She beat her with her fists, she beat her with wooden rolling pins, she beat her

> with wooden brooms, she cut her with a knife, she poured scalding hot water on her.
>
> And then she continued the *torture* by forcing the victim on several occasions to take repeated showers – shower after shower after shower – for what apparent reason, Judge – some type of punishment in the Defendant's *twisted mind.*

Id. at 101a (emphasis added). In support of these accusations, the government submitted graphic photos of the alleged victims and their injuries. Dist. Ct. Dkt. No. 49, Ex. 3.

At the same hearing, the prosecutor made gratuitous references to the Sabhnanis' wealth. After asserting that they had made Enung and Samirah "sleep on mats on the kitchen floor," for example, the prosecutor sarcastically remarked that the Sabhnanis "had two kitchens, of course, so I guess it was okay for them to make the victims sleep on one of the floors." App., *infra*, 102a. The prosecutor described the Sabhnanis' home as a "beautiful mansion on one of the most exclusive areas of Long Island." *Id.* at 100a. And she repeatedly stated that the Sabhnanis had "vast sums of money" and "vast resources." *Id.* at 100a, 103a.

The local media seized upon this combination of sensational allegations and class bias. On the very day of the Sabhnanis' initial appearance, the *New York Daily News* ran the photos the government had filed in court with an article titled "L.I. Slavery Evidence." App., *infra*, 118a, 185a. The photos' captions echoed the government's accusations:

- A photo of Enung lying on a mat was captioned "bed for one of two Indonesian women

allegedly kept as slaves by Mahender and Varsha Sabhnani." *Id.* at 185a.

- Photos of Samirah's back and a drawer with a rolling pin were captioned "Varsha Sabhnani allegedly beat one of the women *** with a knife, rolling pin and broomstick." *Ibid.*
- A photo of an arm hooked up to an intravenous line was captioned "If *** Samirah[] was considered 'disobedient,' she was scalded with hot water or forced to eat hot peppers." *Ibid.*
- A photo of a woman kneeling in a closet was captioned "[Enung] was made to sleep in a closet in her bedroom." *Ibid.*

The next day, the *New York Post* ran an article titled "Cruel L.I. Slave Masters," which repeated almost point-for-point the government's view of the case. The *Post* described the Sabhnanis as a "'monstrous' millionaire couple"—"perfume moguls from the mega-rich community of Muttontown"—who "kept two Indonesian women as slaves for five years in their tony estate-turned house of horrors." App., *infra*, 120a. Quoting the prosecutor, the *Post* characterized the case as one of "modern-day slavery," which involved "incomprehensible . . . inhumanity." *Id.* at 120a-121a. The *Post* portrayed petitioner as the "main torturer who doled out the horrific punishment," *id.* at 121a, and highlighted the lurid details of the conduct alleged by the government:

- Samirah was "beaten with brooms and rolling pins, repeatedly sliced on the ears with a paring knife, starved and forced to sleep on the kitchen floor." *Id.* at 120a-121a.

- Petitioner's "cruelty" included "forcing Samirah to take as many as 30 ice-cold showers in a row, run up and down a flight of stairs 150 times as fast as she could[,] and gulp down at least 25 'extremely hot chili peppers at one time.'" *Id.* at 121a.
- Enung "was once forced to *** take as many as 10 icy showers in a row for 'perceived wrongdoing.'" *Id.* at 123a.
- Samirah had "highly visible scars that appear to be permanent over much of her body" and "deep, open knife wounds behind her ears." *Id.* at 122a.
- Samirah and Enung were "starved to the point that they began hiding food." *Ibid.*

b. At a bail hearing on May 17, 2007, the prosecutor made additional claims. She asserted that petitioner had struck Samirah "on the top of the head with a closed fist while *** wearing a rather large ring," hit her "in the face with a metal spoon," "forced [her] to take *** cold baths," starved her, and deprived her of sleep. App., *infra*, 112a-113a. The prosecutor also implied that petitioner had inflicted "bizarre types of punishments and emotional torture and psychological torture" out of religious animus. *Id.* at 115a. In that connection, the prosecutor stated that petitioner had told Samirah that Samirah's "god, Allah is, *** a four letter word for fecal matter" and that petitioner's "god is better" because he "gave [petitioner] good fortune and four good kids." *Ibid.*

The *New York Post* picked up on these developments in an article published the same day. Invoking the fictional villain, the article stated that petitioner had "inflicted 'Cruella De Vil' punishment" on

Samirah. App., *infra*, 130a. The "Cruella" label stuck. The next day, the *Post* ran an article titled "$3.5M Bail For Cruella And Hubby." *Id.* at 132a. It followed that one with a May 19 article titled "Cruella Gals Have Faith," *id.* at 133a; a May 31 article describing Samirah as "a servant to Varsha 'Cruella' Sabhnani," *id.* at 138a; and a June 7 article titled "Cruella Death Threats," *id.* at 146a.

On May 20, 2007, the *New York Times* ran an article titled "Slaves of Long Island," which characterized the case as a "horrifying story of exploitation and cruelty" and detailed the "sickening" abuses alleged by the government. App., *infra*, 134a. In a separate article published the same day, the *Times* opined that the "exploitation and cruelty" that petitioner had allegedly visited upon Samirah and Enung established the need for a new law "crack[ing] down on the trafficking of people for sex and labor." *Id.* at 135a.

On May 31, 2007, in an article titled "Slave 'Slay Threat,'" the *New York Post* reported on the government's new allegation that petitioner's mother had tried to bribe Samirah's son-in-law in Indonesia. App., *infra*, 138a. According to the government, the son-in-law was offered $28,000 to ensure that Samirah "would leave the United States and not cooperate with the prosecution." *Id.* at 138a-139a. The article went on to say that, despite the "horrific charges of 'inhumane' brutality," the Sabhnanis had been permitted to "await trial in their luxurious estate," which "feature[d] an in-ground lagoon pool with waterfall and built-in stainless steel barbecue area." *Id.* at 139a. The *New York Times* also reported on the alleged bribe. *Id.* at 137a.

c. Thereafter, in the months leading up to the trial, articles on the case continued to appear regularly. The following is merely a sampling of the media coverage:

- On June 4, 2007, the Long Island newspaper *Newsday* published an article titled "Judge rips detention plan in slavery case." App., *infra*, 141a-143a. Additional *Newsday* articles followed on June 6 ("New plan for couple to do time at home"); June 7 ("No bail yet for couple accused in slave case"); June 9 ("Slavery case couple hire new lawyers"); June 12 ("Judge orders slavery couple held without bail"); June 15 ("Slave case couple asks for judge's removal" and "'Slave' suspects appeal bail denial"); June 16 ("'Slave' defense knocks judge"); June 26 ("Step toward bail in LI slave case," "Lawyers: slavery couple a flight risk," and "Appeal set in slave case"); June 27 ("Ruling calls for bail deal"); June 28 ("Feds: Armed guards should watch accused slaveholders"); July 10 ("'Slave' suspects win bail but release date unclear"); July 11 ("'Slave' suspects: Woman hurt self"); July 13 ("Attorneys call for slave case trial to be moved"); July 14 ("No bail for pair in Muttontown slave case"); July 17 ("Attorney raps subpoenas in slavery case" and "Daughters subpoenaed in slave case"); July 18 ("Lawyer raps daughter's subpoena in slave case"); July 24 ("Daughters to testify in slavery case"); August 3 ("Once again, bail denied in slavery case"); and August 4 ("Home detention for 'slave couple' delayed"). *Id.* at 144a-145a, 148a-151a, 155a-163a, 170a-173a, 176a,

179a-180a, 183a-184a, 235a-238a, 243a-257a, 260a-262a.

- Articles on the case appeared in the Associated Press wire service on June 11 ("Judge rejects bail application in Long Island slavery case"); June 26 ("Appeals court could allow accused LI slaveholders free on bail," "Court: Bail for Couple Accused of Slaves," and "Millionaire slaveholders may be freed on bail"); June 27 ("Slavery case couple to be granted bail"); and June 28 ("Prosecutors: Bail should mean armed guards in LI slave case"). *Id.* at 152a-154a, 164a-167a, 174a-175a, 177a-178a, 181a-182a. Many of these articles also appeared in *Newsday*.
- The *New York Daily News* and the *New York Times* ran articles on July 10 and July 13, *id.* at 232a-234a, 241a-244a, and the *New York Post* continued its particularly virulent coverage, see *id.* at 239a-240a (July 13 article titled "'Slave' labor of love"); *id.* at 258a-259a (July 31 article titled "'Indonesian slave' was nuts: Long Island family").

Although television and radio coverage is less easily documented, online reports indicated that it was comparable in nature and frequency to the print media's coverage of the case. On May 17, 2007, for example, WABC-TV Eyewitness News reported: "Bail set for LI couple accused of keeping slaves; Police: Worst Case they've ever seen." App., *infra*, 194a, 197a. A week later, on May 24, WABC-TV announced that the "slavery couple" had been indicted and again quoted the police as saying that it was the "worst case they've ever seen." *Id.* at 194a, 198a-200a. On May 30, June 4, June 11, June 26, and

June 28, there were additional broadcasts on WABC-TV, WCBS-TV, WCBS NewsRadio 880, and 1010 WINS Radio, which again employed the government's "modern-day slavery" slogan and detailed its allegations. *Id.* at 194a-196a.

3. The motion for a change of venue

Invoking the Due Process Clause of the Fifth Amendment and Federal Rule of Criminal Procedure 21(a), which requires a transfer to another district if the defendant "cannot obtain a fair and impartial trial" in the district where the case was brought, the Sabhnanis moved for a change of venue based on the pre-trial publicity described above. App., *infra*, 117a-118a, 218a, 230a. Even after the motion was fully briefed, the sensational media coverage continued unabated.[1]

In a memorandum and order dated September 21, 2007, the district court denied the motion. App., *infra*, 87a-96a. The court believed that a change of venue was unwarranted because (a) "the government's statements" that were picked up by the media "were related to the crimes with which defendants are charged" and "[d]efendants' attorneys" themselves placed "their clients in the media spotlight";

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[1] See, *e.g.*, Robert E. Kessler, *Muttontown "slave couple" goes home*, NEWSDAY (Aug. 21, 2007); Selim Algar, *"Cruella" Couple in Home Jail*, NEW YORK POST (Aug. 22, 2007); Richard Weir, *Shackles Off L.I. Pair in Slave-Torture Case Allowed Home on $4.5M Bail*, NEW YORK DAILY NEWS (Aug. 22, 2007); Robert E. Kessler, *Muttontown couple accused of forcing housekeeper to eat vomit*, NEWSDAY (Sept. 19, 2007); *Millionaire Couple Faces New Charges In L.I. Slave Case*, WCBS-TV.com (Sept. 19, 2007); Robert E. Kessler, *New judge named in LI slave case*, NEWSDAY (Sept. 28, 2007).

(b) "the vast majority of media coverage has coincided with the court proceedings" and "amounts to no more than *** the news of the day"; and (c) "thorough voir dire examinations have been used *** to produce unbiased juries, even in high-profile cases." *Id.* at 93a-95a (internal quotation marks omitted).

4. Jury selection

The jury selection confirmed that, contrary to the district court's belief, an unbiased jury could *not* be produced in this high-profile case. The strongly negative reactions to the Sabhnanis reflected in the responses on juror questionnaires demonstrated the extent to which the venue had been saturated with unremittingly hostile pre-trial publicity.

Prospective jurors informed the court that they were "shocked", "angry," and "repulsed" by what they had heard and read in the press. App., *infra*, 270a, 303a, 304a; see also *id.* at 284a ("unacceptable and awful"); *id.* at 306a ("horrific"). Several said they would have difficulty following the court's instruction to ignore the media coverage. *Id.* at 271a, 288a, 292a, 299a-300a. Others expressed bias against the Sabhnanis on account of their wealth, *id.* at 274a-275a, 290a, 292a, 303a, or national origin, *id.* at 272a-273a, 287a, 290a, 293a, 306a. An alarming number unequivocally stated their belief that the Sabhnanis were guilty, *id.* at 271a, 274a, 276a, 282a-284a, 286a, 294a-295a, 298a-299a, 302a, 306a, or admitted that they would have trouble remaining fair and impartial, *id.* at 265a, 267a-269a, 271a-277a, 280a-282a, 284a-287a, 290a-292a, 294a-296a, 300a, 304a-305a. One went so far as to say that there was "no way that the [Sabhnanis] could convince her that they [were] innocent." *Id.* at 268a. Many prospective jurors explicitly linked their per-

ception that the Sabhnanis were guilty to the media coverage of the case. See *id.* at 298a ("as presented in the newspaper the defendants appear to be guilty"); *id.* at 302a ("response to the media exposure assume[d] guilt"); *id.* at 306a ("*Newsday*, the TV and radio" made Sabhnanis "seem guilty to me").[2]

As remarkable as these statements were, they likely *understated* the prejudicial impact of the pretrial publicity. During voir dire, a prospective juror who had been excused sent an e-mail to the court describing what she had learned in the jury-selection process based on her conversations with other members of the jury pool. App., *infra*, 308a-311a. The case had "receiv[ed] a lot of attention," she said, and everyone on "Long Island[] that is being honest" knew about it. *Id.* at 309a-310a (emphasis omitted). The excused juror expressed "surprise[]" about the "number of jurors *** willing to pretend that they 'lived in a cave'" in order to serve on the jury and "astonish[ment]" at the "sheer number of people" who were "willing to hide truths, out and out lie, or, at the very least, practice all forms of omission *** in the pursuit of getting onto [the] jury." *Id.* at 308a-310a (emphasis omitted). She believed that a fair and unbiased jury could not be assembled when people were "lying to get on [the jury] and admitting

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[2] See also App., *infra*, 266a (prospective juror "found what he read in the *Daily News* and the *Post* appalling"); *id.* at 278a (media accounts made Sabhnanis "look bad"); *id.* at 281a ("prior opinion from the media coverage" made it impossible to "remain fair and impartial"); *id.* at 292a (based on "media exposure," Sabhnanis "don't seem like nice people"); *id.* at 300a (saw "case on TV" and "thought it was a horrible thing to do to another person").

to both bias and opinions of guilt while lying in wait to be chosen." *Id.* at 311a (emphasis omitted).

The Sabhnanis requested that the magistrate judge presiding over jury selection call the e-mail to the attention of the jurors who had already been qualified and invite them to supplement their answers about the extent to which media coverage had affected their views of the case. App., *infra*, 315a-316a, 318a-319a. The magistrate judge refused to take any corrective action. *Id.* at 316a, 319a.

5. The trial

Trial commenced in October 2007 and lasted for seven weeks. App., *infra*, 17a, 21a. Intensive press coverage continued throughout that period. See Pet. C.A. App. 137-236.

The government's case depended heavily on the testimony of the two alleged victims, Samirah and Enung. App., *infra*, 17a-18a. The defense argued that they should not be believed, because, among other things, (a) visitors to the Sabhnanis' home had observed Samirah and Enung and noticed nothing unusual; (b) the medical evidence did not support Samirah's claim that she had been subjected to physical abuse; (c) Samirah believed that petitioner had killed Samirah's son by casting a spell on him; and (d) Enung wanted to find a witch doctor to cast a spell that caused Mahender Sabhnani to be attracted to her and give her money. *Id.* at 18a, 26a-27a; Pet. C.A. Br. 4-9.

After a little over two days of deliberations, the jury found the Sabhnanis guilty on all counts. The district court sentenced petitioner to 11 years of imprisonment and her husband to 40 months. App., *infra*, 2a, 18a.

B. The Court Of Appeals' Decision

1. The Sabhnanis raised multiple claims on appeal, including, as relevant here, that the pervasive pre-trial publicity required that the case be tried in a different venue. In an opinion issued on March 25, 2010, the court of appeals rejected that claim and all the others, except for one relating to restitution. The court thus vacated the restitution award and remanded for recalculation, but affirmed in all other respects. App., *infra*, 1a-86a.

The court of appeals acknowledged that pre-trial publicity "can so saturate a community (and be so highly prejudicial to the defendants) that courts should in such cases presume a fair trial was impossible." App., *infra*, 22a. The court concluded, however, that "neither the character of the publicity nor the extent to which potential jurors were either exposed to it or affected by it warrants the conclusion that a presumption or inference of generalized prejudice was appropriate in this case." *Id.* at 24a. The court instead required "actual evidence that the venire was biased" and determined that "[t]he record *** does not establish" actual prejudice. *Id.* at 22a.

In holding that "the district judge did not abuse his discretion in denying the Sabhnanis' motion to transfer venue," App., *infra*, 20a, the Second Circuit relied upon, and approved, the considerations identified by the district court. The court of appeals concluded that "the prosecution's statements regarding the character of the crimes" that were picked up by the press "were proper in the context in which they were made" and that, in any event, "the press coverage appears to have been driven at least as much by comments of the Sabhnanis' counsel as by any prosecutor's statement." *Ibid.* The court also reasoned

that "most of the press coverage tracked the frequent court proceedings in this case" and that "[c]overage of actual developments in a criminal case generally will not rise to the level of prejudicial publicity that will warrant a venue change." *Id.* at 21a. Finally, the court believed that "the key to determining the appropriateness of a change of venue is a searching voir dire" and that the voir dire in this case was adequate. *Id.* at 23a.

2. On April 6, 2010, the Sabhnanis filed a petition for rehearing. They requested, among other things, that "the Panel or en banc Court hold this matter pending the [Supreme Court's] decision in *Skilling* [v. *United States*]," which presented the question of "when excessive adverse publicity mandates a change of venue," and that the Second Circuit "then rehear [the case] or rehear it en banc." Petition for Rehearing at 14, *Sabhnani*, 599 F.3d 215 (2d Cir. 2010) (No. 08-3720). On May 12, 2010, the court of appeals denied the petition for rehearing. App., *infra*, 97a. This Court decided *Skilling* on June 24, 2010.

REASONS FOR GRANTING THE PETITION

This case involves the question of "[w]hen *** the publicity attending conduct charged as criminal dim[s] prospects that the trier can judge a case, as due process requires, impartially, unswayed by outside influence." *Skilling* v. *United States*, 130 S. Ct. 2896, 2913 (2010). More specifically, the case involves two issues related to the presumption of jury prejudice that arises when "adverse pretrial publicity" is such that "'the jurors' claims that they can be impartial should not be believed.'" *Mu'Min* v. *Virginia*, 500 U.S. 415, 429 (1991) (quoting *Patton* v. *Yount*, 467 U.S. 1025, 1031 (1984)). In a case of that type,

the defendant need not demonstrate "actual prejudice" from the publicity to be entitled to a trial in a different venue. *Murphy* v. *Florida*, 421 U.S. 794, 799, 803 (1975).

In *Skilling*, this Court clarified that, under its precedents, a presumption of prejudice arises when pervasive pre-trial publicity is "vivid" and "unforgettable," the trial "swiftly follow[s]" the defendant's arrest, and the defendant is found guilty on all counts. 130 S. Ct. at 2916. Those circumstances were not present in *Skilling*, but they are present here, and so the court of appeals' refusal to apply the presumption conflicts with this Court's decisions. Certiorari should be granted to bring the Second Circuit into line with this Court's precedents. See Point A, *infra*.

In *Skilling*, the Court did not decide the specific question on which it had granted certiorari—whether the presumption of jury prejudice can be rebutted—because it determined that the presumption did not arise in that case. But the presumption does arise here, and so the Court should also grant certiorari to decide the question that it had no occasion to reach in *Skilling*. See Point B, *infra*.

At the very least, the Court should grant the petition, vacate the judgment below, and remand for further consideration in light of *Skilling*. The Second Circuit's decision is inconsistent with the reasoning in *Skilling*, of which the court of appeals did not have the benefit at the time of its decision, and there is a reasonable probability that it would reach a different conclusion if given the opportunity for reconsideration. See Point C, *infra*.

A. The Court Should Grant Certiorari To Decide Whether A Presumption Of Prejudice Arises When Pervasive Pre-Trial Publicity Is Vivid And Unforgettable, The Trial Swiftly Follows The Arrest, And The Defendant Is Found Guilty On All Counts.

This Court has presumed juror prejudice in three cases: *Rideau* v. *Louisiana*, 373 U.S. 723 (1963); *Estes* v. *Texas*, 381 U.S. 532 (1965); and *Sheppard* v. *Maxwell*, 384 U.S. 333 (1966). See *Murphy*, 421 U.S. at 798. In *Skilling*, the defendant relied on these cases in arguing that juror prejudice should be presumed there as well. See *Skilling*, 130 S. Ct. at 2915. The Court found that reliance misplaced, because there are "[i]mportant differences" between these cases and *Skilling*, which "shares little in common" with them. *Id.* at 2915-2916. The Court identified several characteristics of *Rideau*, *Estes*, and *Sheppard* that led the Court to apply a presumption of prejudice. Those characteristics were all absent in *Skilling*, but—with one partial exception—they are present here.

Skilling's analysis thus confirms that, if a presumption of juror prejudice was warranted in *Rideau*, *Estes*, and *Sheppard*, it is warranted here as well. *Skilling* also demonstrates that the Second Circuit's refusal to apply the presumption is inconsistent with these decisions. Certiorari should therefore be granted because the court of appeals "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c).

1. *Skilling* makes clear that a presumption of prejudice arises when some combination of the fol-

lowing circumstances are present: the news reports included "blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight"; the defendant's "trial swiftly followed a widely reported crime"; there was no "large, diverse pool of potential jurors"; and, "of prime significance," the jury found the defendant guilty on all counts, and thus "the jury's verdict did not undermine in any way the supposition of juror bias." *Skilling*, 130 S. Ct. at 2915-2916; see, *e.g.*, *State* v. *Hayes*, No. CR070241859, 2010 WL 3328076, at *2 (Conn. Super. Ct. July 28, 2010) ("The circumstances under which a 'presumption of prejudice' will be inferred by the courts have recently been analyzed in *Skilling* v. *United States*, *** [which] identifies four relevant factors for judicial consideration ***."). All but one of those circumstances are undeniably present here.

First, the news stories about petitioner were not merely "not kind." *Skilling*, 130 S. Ct. at 2916. The government accused petitioner of having committed "absolutely monstrous" acts of "incomprehensible brutality and violence and inhumanity," including "modern day slavery" and "physical torture," that the police considered the "worst *** they've ever seen." App., *infra*, 99a, 101a, 103a, 197a. Echoing—often verbatim—that superheated rhetoric, the unrelenting press reports described above purveyed "blatantly prejudicial information" that was "vivid, unforgettable," "likely imprinted indelibly" in the minds of potential jurors, and "of the type readers or viewers could not reasonably be expected to shut from sight." *Skilling*, 130 S. Ct. at 2916. Both the offenses with which petitioner was charged—including peonage and forced labor—and the associated allegations of brutality and torture are a world apart from the

bloodless corporate fraud that this Court in *Skilling* deemed insufficiently "memorable and prejudicial" to give rise to a presumption of prejudice. *Ibid.* Like robbery, kidnapping, and murder—the offenses at issue in *Rideau*, see 373 U.S. at 723-724, and *Sheppard*, see 384 U.S. at 335-336—they are precisely the sorts of crimes that are likely to evoke an intensely visceral response. See also *Skilling*, 130 S. Ct. at 2922 ("news stories about Enron contained nothing resembling the horrifying information rife in reports about [the] rampage of robberies and murders" at issue in *Irvin* v. *Dowd*, 366 U.S. 717 (1961), which held that pre-trial publicity had deprived the defendant of a fair trial). Indeed, "enslavement" and "torture" are *more* likely to evoke that response than ordinary crimes of violence.

The risk of juror prejudice was only heightened by the media's reporting of gruesome details of petitioner's alleged conduct—even to the point of publishing photographs of Samirah and Enung's injuries. "[D]etails of the methods that [petitioner] allegedly used to torture [her] victims," App., *infra*, 19a—beatings inflicted with a rolling pin, broom, and knife; forced consumption of hot peppers; scalding with hot water; forced cold showers; starvation; and sleep deprivation—are precisely the sort of "evidence of the smoking-gun variety" that "invited prejudgment of [petitioner's] culpability." *Skilling*, 130 S. Ct. at 2916. Given this "barrage of newspaper headlines, articles, *** and pictures *** unleashed against [petitioner] during the *** months preceding h[er] trial," the "build-up of prejudice is clear and convincing." *Irvin*, 366 U.S. at 725.

Second, petitioner's trial "swiftly followed a widely reported crime." *Skilling*, 130 S. Ct. at 2916. On-

ly five months elapsed between petitioner's arrest (in May 2007) and the start of trial (in October 2007). App., *infra*, 21a. This case is thus very much like *Sheppard*, in which the trial began approximately three months after the defendant's arrest, see 384 U.S. at 341-342, and very much *un*like *Skilling*, in which "over four years elapsed between Enron's bankruptcy and Skilling's trial" and the "decibel level of media attention diminished somewhat in the years following Enron's collapse," 130 S. Ct. at 2916. There was no passage of time here that could have made the prejudicial effects of pre-trial publicity dissipate and "helped 'sooth[e] and eras[e]' community prejudice." *Id.* at 2914 n.13 (quoting *Yount*, 467 U.S. at 1034; brackets added by Court). On the contrary, in the months immediately prior to trial, the media kept feeding what the government described as the "interest among the public in this case," App., *infra*, 319a, by continuing to publish sensational articles.

Third, and of "prime significance," the jury handed the government an "overwhelming victory" by finding both petitioner and her husband guilty on all 12 counts of the indictment. *Skilling*, 130 S. Ct. at 2916. Thus, as "[i]n *Rideau*, *Estes*, and *Sheppard*, *** the jury's verdict did not undermine in any way the supposition of juror bias." *Ibid.*[3]

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[3] The only one of the four factors identified in *Skilling* that does not clearly favor petitioner does not clearly favor the government either: "the size and characteristics of the community in which the crime occurred." *Skilling*, 130 S. Ct. at 2915. While this case is not like *Rideau*, in which the crime was committed "in a parish of only 150,000 residents," it is also not like *Skilling*, in which the crime was committed in "the fourth most populous city in the Nation." *Ibid.* The alleged crimes occurred in a small suburban community on Long Island, and the trial was

2. In refusing to apply a presumption of prejudice, the court of appeals disregarded the considerations that—as *Skilling* has since made clear—must guide the presumption-of-prejudice inquiry. The court did not consider the "vivid" and "unforgettable" nature of the pre-trial publicity, *Skilling*, 130 S. Ct. at 2916; it simply asserted, conclusorily, that "the character of the publicity" did not warrant a presumption of prejudice, App., *infra*, 24a. The court gave short shrift to the fact that the trial "swiftly followed" the arrests, *Skilling*, 130 S. Ct. at 2916; it acknowledged that the trial commenced only "five months" later, but found it permissible to deny a venue change even when "the press coverage [i]s continuing and prominent," App., *infra*, 21a (internal quotation marks omitted). And the court entirely ignored the jury's guilty verdict on all counts, a matter of "prime significance" that resulted in an "overwhelming victory" for the government. *Skilling*, 130 S. Ct. at 2916.

In the end, the Second Circuit rejected a presumption of prejudice with little more than the observation that "[c]ases presenting this scenario are very rare." App., *infra*, 22a. But that is not a sufficient justification for refusing to apply the presumption. Nor is anything else the court said in its opinion.

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held more than 50 miles from the federal courthouses in Manhattan and Brooklyn. In any event, the absence of a "large, diverse pool of potential jurors" cannot be a necessary condition for the presumption of prejudice, since the *Sheppard* case was tried in Cleveland. See *Sheppard* v. *Maxwell*, 231 F. Supp. 37, 60 (S.D. Ohio 1964), rev'd, 346 F.3d 707 (6th Cir. 1965), rev'd, 384 U.S. 333 (1966).

For example, the court of appeals declined to "find any error in the district court's determination that *** the press coverage appears to have been driven at least as much by comments of the Sabhnanis' counsel as by any prosecutor's statements." App., *infra*, 20a. As an initial matter, that determination *is* erroneous, and manifestly so. On the few occasions when defense counsel commented to the press, they typically made a brief statement of fact or simple expression of confidence in the case; their benign remarks, see *id.* at 93a-94a & nn.4-6, 223a-228a, pale in comparison to the government's over-the-top rhetoric. Whether erroneous or not, moreover, the determination has no legal significance. As this Court explained in *Rideau*, "the question of who originally initiated" the prejudicial pre-trial publicity is "a basically irrelevant detail." 373 U.S. at 726. Consistent with that view, this Court concluded in *Sheppard* that the trial judge "did not fulfill his duty to protect [the defendant] from the inherently prejudicial publicity," even though the defendant "made many public statements to the press and wrote feature articles asserting his innocence" and thus "many of the prejudicial news items c[ould] be traced to *** the defense." 384 U.S. at 340, 361, 363.

The Second Circuit also thought it significant that "most of the press coverage tracked the frequent court proceedings in this case." App., *infra*, 21a. But the court did not explain why articles portraying the Sabhnanis as a "millionaire slave couple," and petitioner's actions as "torture," are any less "vivid" and "unforgettable," *Skilling*, 130 S. Ct. at 2916, simply because they happen to have been prompted by a proceeding in the case. They self-evidently are not.

Finally, the Second Circuit believed that "the key to determining the appropriateness of a change of venue is a searching voir dire." App., *infra*, 23a (internal quotation marks omitted). But the whole point of the presumption of prejudice is that "the jurors' claims that they can be impartial should not be believed." *Yount*, 467 U.S. at 1031. Accordingly, voir dire either is irrelevant to the presumption-of-prejudice inquiry or, at most, could be relevant only when the government seeks to rebut the presumption. See Point B, *infra*. It has no bearing on whether the presumption arises in the first place.

3. If anything, a presumption of prejudice may be even more warranted in this case than in *Rideau*, *Estes*, and *Sheppard*—all of which were state cases—because petitioner has invoked both the Due Process Clause and Federal Rule of Criminal Procedure 21(a). "As this Court has indicated, its supervisory powers confer 'more latitude' to set standards for the conduct of trials in federal courts than in state courts." *Skilling*, 130 S. Ct. at 2953 n.9 (Sotomayor, J., concurring in part and dissenting in part) (quoting *Mu'Min*, 500 U.S. at 424).[4] For that reason, "the standard of Rule 21" is "more favorable" to the defendant than the Due Process standard, which pro-

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[4] See, *e.g.*, *Marshall* v. *United States*, 360 U.S. 310 (1959) (per curiam) (reversing conviction, in exercise of supervisory powers and without finding constitutional violation, based on jurors' exposure to prejudicial publicity); see also *Murphy*, 421 U.S. at 804 (Burger, C.J., concurring) ("I would not hesitate to reverse petitioner's conviction in the exercise of our federal supervisory powers, were this a federal case"); *Rideau*, 373 U.S. at 728 (Clark, J., dissenting) ("if this case arose in a federal court, over which we exercise supervisory powers, I would vote to reverse the judgment").

vides only a "minimum constitutional baseline." *United States* v. *Skilling*, 554 F.3d 529, 559 n.39 (5th Cir. 2009), vacated in part on other grounds, 130 S. Ct. 2896 (2010).

That Rule 21 is more protective than the Due Process Clause is confirmed by this Court's decision in *Skilling*, in which—unlike in this case—the defendant failed to raise a claim under Rule 21. See 130 S. Ct. at 2913 n.11. Had the Court been of the view that the Due Process and Rule 21 standards are identical, it would have had no reason to draw any distinction between them. Instead, the Court took care to point out that, because of the waiver, there was no occasion to decide whether a change of venue would have been required under Rule 21. See *ibid.* ("We therefore review the District Court's venue-transfer decision only for compliance with the Constitution."); see also *id.* at 2942 (Alito, J., concurring in part and concurring in the judgment) ("I also do not understand the opinion of the Court as reaching any question regarding a change of venue under Federal Rule of Criminal Procedure 21."). The Court left open the possibility that a venue change *would* have been required under Rule 21, moreover, even in a case that "share[d] little in common with those [cases] in which [this Court] approved a presumption of juror prejudice." *Id.* at 2916.

Unlike in *Skilling*, the question whether a presumption of prejudice is warranted under Rule 21 is squarely presented in this case, which—again unlike *Skilling*—has *much* "in common with those in which [this Court] approved [such] a presumption." 130 S. Ct. at 2916. That makes this case an especially good vehicle for deciding whether the presumption applies.

B. The Court Should Also Grant Certiorari To Decide Whether A Presumption Of Jury Prejudice Is Irrebuttable.

In *Skilling*, the Fifth Circuit held that pervasive pre-trial publicity gave rise to a presumption of jury prejudice, but determined that the presumption was rebuttable and that it was rebutted in that case. See *Skilling*, 130 S. Ct. at 2911-2912. This Court granted certiorari to decide "[w]hether the government may rebut the presumption of prejudice." Petition for Writ of Certiorari at i, *Skilling*, 130 S. Ct. 2896 (2010) (No. 08-1394), available at 2009 WL 1339243. The Court ultimately "f[ou]nd a presumption of prejudice unwarranted in th[e] case," however, and thus determined that it "need not, and [would] not, reach th[at] question[]," *Skilling*, 130 S. Ct. at 2912 n.10, 2917 n.18. Because a presumption of prejudice is warranted here, this case presents the Court with an opportunity to decide the question it agreed, but had no occasion, to decide in *Skilling*. The Court has already determined that the question is sufficiently important to justify a grant of certiorari, and it should decide the question now.

1. The question whether a presumption of jury prejudice can be rebutted has divided the lower courts. That is doubtless one of the reasons why the Court granted certiorari to decide the question in *Skilling*. The Fifth and Eleventh Circuits have held that the presumption may be rebutted through voir dire.[5] By contrast, the Third, Fourth, Ninth, and

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[5] See, *e.g.*, *United States* v. *Chagra*, 669 F.2d 241, 250 (5th Cir. 1982) ("This presumption is rebuttable, *** and the government may demonstrate from the voir dire that an impartial jury was actually impanelled in [the defendant's] case."), overruled in

Tenth Circuits have concluded that, when a presumption of prejudice arises, the case must be tried in a different venue.[6] A number of state courts of last resort have reached the same conclusion.[7]

As the decisions of this Court make clear, the majority view is correct. In the cases in which this

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part on other grounds, *Garrett* v. *United States*, 471 U.S. 773 (1985); *United States* v. *Campa*, 459 F.3d 1121, 1143 (11th Cir. 2006) (en banc) ("[T]he government can rebut any presumption of juror prejudice by demonstrating that the district court's careful and thorough voir dire *** ensured that the defendant received a fair trial by an impartial jury.").

[6] See, *e.g.*, *Flamer* v. *Delaware*, 68 F.3d 736, 754 (3d Cir. 1995) (en banc) (Alito, J.) ("In order to invoke [the] presumption of prejudice, [t]he community and media ... reaction must have been so hostile and so pervasive as to make it apparent that even the most careful *voir dire* process would be unable to assure an impartial jury." (internal quotation marks omitted; second set of brackets and ellipsis added by court)); *United States* v. *Higgs*, 353 F.3d 281, 307 (4th Cir. 2003) ("[T]he district court must determine whether the publicity is so inherently prejudicial that trial proceedings must be presumed to be tainted, and, if so, grant a change of venue prior to jury selection." (internal quotation marks omitted)); *Daniels* v. *Woodford*, 428 F.3d 1181, 1210 (9th Cir. 2005) (finding presumption of prejudice and reversing conviction without considering adequacy of voir dire); *United States* v. *McVeigh*, 153 F.3d 1166, 1182 (10th Cir. 1998) (when presumption of prejudice arises, "we simply cannot rely on jurors' claims that they can be impartial and declare the publicity to be prejudicial as a matter of law" (internal quotation marks omitted)), overruled in part on other grounds, *Hooks* v. *Ward*, 184 F.3d 1206 (10th Cir. 1999).

[7] See, *e.g.*, *People* v. *Leonard*, 157 P.3d 973, 993-994 (Cal. 2007) (when presumption of prejudice arises, "the ensuing conviction must be reversed without regard to *** the prospective jurors' protestations of neutrality during voir dire"); *DeRosa* v. *State*, 89 P.3d 1124, 1135 (Okla. Crim. App. 2004) (in some cases, "prejudice against the defendant must be presumed and any conviction overturned").

Court applied a presumption of jury prejudice, it reversed convictions on that basis without any inquiry into whether the presumption was rebutted. Thus, in *Rideau*, "the foundation precedent," *Skilling*, 130 S. Ct. at 2913, the Court reversed the conviction "without pausing to examine a particularized transcript of the voir dire examination of the members of the jury." 373 U.S. at 727. Similarly, in *Estes*, after finding that prejudice was "inherent" in the publicity, the Court found it unnecessary to undertake "a careful examination of the facts in order to determine whether [actual] prejudice resulted." 381 U.S. at 543. Finally, in *Sheppard*, the Court likewise made no inquiry into actual prejudice after finding the publicity to be "inherently prejudicial." 384 U.S. at 363.

The Court confirmed this view in *Vasquez* v. *Hillery*, 474 U.S. 254 (1986), which catalogued the types of errors that are subject to a rule of automatic reversal. The Court explained that the "expos[ure] to prejudicial publicity" in *Sheppard* "*required* reversal of the conviction" because the effect of the exposure "cannot be ascertained." *Id.* at 263 (emphasis added); accord *United States* v. *Gonzalez-Lopez*, 548 U.S. 140, 149 n.4 (2006). This understanding of the Court's presumption-of-prejudice cases is consistent with the basic justification for the presumption, which is that pre-trial publicity can be so prejudicial that "the jurors' claims that they can be impartial" simply "should not be believed." *Yount*, 467 U.S. at 1031; accord *Mu'Min*, 500 U.S. at 429. The Court has never suggested that this disbelief can be overcome by a searching voir dire.

2. Even if a presumption of jury prejudice could be rebutted, it was not rebutted here. Because the

district court failed to apply the presumption at all, it did not do what is required in those circuits in which the presumption is rebuttable: place on the government "the burden of proving that the twelve jurors finally impanelled actually were impartial," a burden that might be met by evidence that the seated jurors "had [n]ever been exposed *** to the inflammatory publicity." *Mayola* v. *Alabama*, 623 F.2d 992, 1000-1001 (5th Cir. 1980); see also *United States* v. *Campa*, 459 F.3d 1121, 1143 (11th Cir. 2006) (en banc). Instead of deciding whether the government had demonstrated that the seated jurors were not actually exposed to prejudicial publicity, the district court found that "*the Sabhnanis* could *not* demonstrate that any juror *was* actually exposed to prejudicial publicity." App., *infra*, 23a n.8 (emphasis added). Even assuming that the presumption is rebuttable, this gets things exactly backwards.

Because the district court harbored an "erroneous view of the law," in short, its findings are entitled to no weight. *Pullman-Standard* v. *Swint*, 456 U.S. 273, 292 (1982). "Historical facts 'found' in the perspective framed by an erroneous legal standard cannot plausibly be expected to furnish the basis for correct conclusions." *Rogers* v. *Richmond*, 365 U.S. 534, 547 (1961). If anything, the record here—which includes "an e-mail sent to the court by an excused potential juror[] who claimed that other members of the venire were 'lying' and pretending to 'live in a cave' in order to serve on the jury," App., *infra*, 23a, 308a-311a, coupled with the magistrate judge's refusal to take remedial action in response, *id.* at 316a, 319a—demonstrates that the government would not have been able to discharge its "very difficult" burden of proving that all the seated jurors "actually

were impartial," *Mayola*, 623 F.2d at 1001, even if the lower courts had correctly held it to that burden.

C. At The Very Least, The Court Should Grant The Petition, Vacate The Judgment Below, And Remand For Further Consideration In Light Of *Skilling*.

If the Court does not grant plenary review, it should grant certiorari, vacate the judgment below, and remand the case (GVR) for reconsideration in light of *Skilling*, which was decided three months after the decision below. As this Court reiterated just last Term, a GVR order is appropriate when (1) "'intervening developments ... reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration'" and (2) "'such a redetermination may determine the ultimate outcome' of the matter." *Wellons* v. *Hall*, 130 S. Ct. 727, 731 (2010) (per curiam) (quoting *Lawrence* v. *Chater*, 516 U.S. 163, 167 (1996) (per curiam); ellipsis added by Court). Both criteria are satisfied here.

In the decision below, the Second Circuit acknowledged this Court's holdings that publicity can be "so highly prejudicial to the defendants" that a court should "presume a fair trial was impossible." App., *infra*, 22a (citing, *inter alia*, *Rideau*). The court nevertheless determined, without really explaining why, that "neither the character of the publicity nor the extent to which potential jurors were either exposed to it or affected by it" justifies the conclusion that "a presumption or inference of generalized prejudice was appropriate in this case." *Id.* at 24a.

Because the court of appeals did not have the benefit of this Court's analysis in *Skilling*, it took no account of the characteristics of *Rideau*, *Estes*, and *Sheppard* that—as *Skilling* has since made clear—gave rise to the presumption of prejudice in these cases, and it failed to address whether those characteristics are present here. As we have explained, the court did not consider the "memorable," "indelibl[e]," "vivid," and "unforgettable" nature of the pre-trial publicity; it gave short shrift to the fact that the trial "swiftly followed" the arrests; and it entirely ignored something of "prime significance": the jury's guilty verdict on all counts, which resulted in an "overwhelming victory" for the government. *Skilling*, 130 S. Ct. at 2916. There is thus a "reasonable probability" that, if "given the opportunity for further consideration," *Wellons*, 130 S. Ct. at 731 (internal quotation marks omitted), the court of appeals would reject an implicit premise of its decision—namely, that the considerations subsequently identified in *Skilling* are not fundamental, or even especially relevant, to the presumption-of-prejudice inquiry.

It is equally clear that the court's "redetermination" of that question could "determine the ultimate outcome" of the case. *Wellons*, 130 S. Ct. at 731 (internal quotation marks omitted). First, under the standard articulated in *Skilling*, the court might well conclude that a presumption of prejudice applies here; indeed, we believe it would be compelled to do so. See Point A, *supra*. Second, because the presumption is not rebuttable—and because, even if it were, it could not be rebutted in this case—presuming prejudice would require that petitioner's conviction be vacated, and she would be entitled to a new trial before a jury untainted by the pre-trial publicity. See Point B, *supra*.

When, as here, an intervening decision of this Court casts doubt on the decision below, a GVR order both "guarantees to the petitioner full and fair consideration of h[er] rights in light of all pertinent considerations" and "respects the dignity of the Court of Appeals by enabling it to consider *** [a] relevant decision[] *** that w[as] not previously before it." *Stutson* v. *United States*, 516 U.S. 193, 197 (1996) (per curiam). If the Court does not grant plenary review, it should issue a GVR order in this case.

CONCLUSION

The petition for a writ of certiorari should be granted and the case set for plenary review. In the alternative, the petition should be granted, the judgment of the court of appeals vacated, and the case remanded for further consideration in light of *Skilling* v. *United States*, 130 S. Ct. 2896 (2010).

Respectfully submitted.

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OCTOBER 2010

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

United States of America,

Appellee,

v.

Mahender Murlidhar Sabhnani,
Varsha Mahender Sabhnani,

Defendants-Appellants.

Docket No. 08-3720-cr(L), 08-3731-cr(CON)

Argued February 5, 2009.
Decided March 25, 2010.

Before: WESLEY, LIVINGSTON, Circuit Judges, and RESTANI, Judge.*

DEBRA ANN LIVINGSTON, *Circuit Judge*:

Defendants-Appellants Mahender Murlidhar Sabhnani ("Mahender") and Varsha Mahender Sabhnani ("Varsha") (collectively "the Sabhnanis" or

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* The Honorable Jane A. Restani, Chief Judge of the United States Court of International Trade, sitting by designation.

"appellants") appeal from judgments of the United States District Court for the Eastern District of New York following a jury trial before the Hon. Arthur D. Spatt, *Senior Judge*, convicting them of two counts each of forced labor in violation of 18 U.S.C. § 1589(a), harboring aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(iii), holding a person in a condition of peonage in violation of 18 U.S.C. § 1581(a), and document servitude in violation of 18 U.S.C. § 1592(a), as well as conspiracy to commit each of these substantive offenses. The district court sentenced Mahender Sabhnani to 40 months' imprisonment, to be followed by a three-year term of supervised release, and ordered him to pay a $12,500 fine and a special assessment of $1200. Varsha Sabhnani was sentenced to 132 months' imprisonment, followed by a three-year term of supervised release, and was ordered to pay a $25,000 fine and a special assessment of $1200. The court also required both defendants to pay the sum of $936,546.22 in restitution to their victims, and ordered both defendants to forfeit their ownership interest in their home, where their victims had been held. The district court's forfeiture order was stayed pending the disposition of this appeal. Varsha is currently serving her sentence, and Mahender was granted bail pending appeal by this Court.

The Sabhnanis jointly and individually make numerous arguments on appeal, including: (1) improper refusal by the district court to change the venue of the trial in light of negative publicity regarding the defendants; (2) erroneous refusal to compel a prosecution witness to submit to an independent psychiatric examination; (3) incorrect instruction of the jury to the effect that it could convict Mahender Sabhnani of the charged crimes on a theory of omis-

sion as opposed to affirmative action; (4) insufficiency of the evidence as to Mahender Sabhnani's convictions; (5) incorrect instruction of the jury prohibiting it from drawing an adverse inference from the refusal of prosecution witnesses to speak to defense counsel; (6) improper refusal to recall a prosecution witness following the completion of testimony and the beginning of jury deliberations; (7) insufficient investigation into purported juror misconduct; (8) procedural unreasonableness in Varsha and Mahender's sentencing, consisting of multiple errors in the district court's calculation of the applicable Guidelines range; (9) various errors in the calculation of the required amount of restitution; and (10) overbroad and unconstitutionally excessive property forfeiture. For the reasons that follow, we conclude that none of these challenges has merit, with the partial exception of the Sabhnanis' challenge to the calculation of the restitution award.

BACKGROUND

Mahender Sabhnani, a naturalized citizen of the United States born in India, lived with his wife, Varsha Sabhnani, a naturalized United States citizen born in Indonesia, in a single-family home in Syosset, New York with their four children. The jury found beyond a reasonable doubt that the Sabhnanis conspired to harbor in their Syosset home two aliens who were unlawfully in the United States – specifically, two domestic servants the couple brought from Indonesia. The jury further found that the Sabhnanis conspired to hold these two women in peonage, keeping their travel documents, and to have the aliens perform forced labor on the Sabhnanis' behalf. The jury also convicted the Sabhnanis of substantive counts of harboring, peonage, forced labor, and doc-

ument servitude based upon the evidence of their mistreatment of the two women, Samirah and Enung. The evidence at the Sabhnanis' trial, viewed in the light most favorable to the government, demonstrated the following:

In 2001 and 2002, Varsha's mother, known as "Mrs. Joti," arranged for Samirah, a 53-year old woman from Indonesia, to obtain an Indonesian passport and United States visa in order to travel to the United States to work in the Sabhnanis' home. Samirah, a rice vender who spoke no English, did not know what a visa was. She did not know how to drive a car or use an American telephone. Samirah agreed to work in the United States as a domestic servant for $200 per month. She traveled to the United States in February 2002 in the company of Mrs. Joti, who carried Samirah's passport, and Varsha's brother Naresh. Mahender and Varsha Sabhnani met them at John F. Kennedy International Airport and drove them to the couple's home. Varsha Sabhnani took Samirah's passport and other related documents and kept them until approximately April 2007, about one year after Samirah's passport had expired. Mrs. Joti returned to her home in Indonesia shortly after delivering Samirah.

Samirah worked as a domestic servant for Varsha and Mahender Sabhnani from February 2002 through May 2007, even though the visa that Mrs. Joti obtained for her authorized Samirah to enter the United States solely as Mrs. Joti's employee and to work for her in this country only until May 2002. During her time with the Sabhnanis, Samirah was responsible for cooking, cleaning, laundry, and other chores at the couple's large three-story residence, which included about seven bedrooms, seven baths,

and separate offices from which Mahender Sabhnani operated PVM International and Eternal Love Parfums, the two companies that together constituted his international perfume and toiletry business.[1] Varsha told Samirah that her $200 per month salary was being paid to her daughter Lita in Indonesia. Lita was in fact paid only $100 per month. Samirah received no money herself.

The circumstances of Samirah's employment were more than severe. While at the Sabhnanis' home, Samirah, who had slept in her own bed at home in Indonesia, was required to sleep first on the carpet outside the bedroom of one of the children and then on a mat on the floor of one of the residence's kitchens. Samirah was not given adequate food to eat – to the point that she was often forced by hunger to eat from the garbage. She worked for extremely long hours per day and was often deprived of sleep. On one occasion in 2003, William Hespeler, an electrician performing work at the home, observed Samirah dressed in "raggedy clothes," following Mahender Sabhnani as she carried a food and beverage tray. Tr. 3586. Her meager dress that day was not atypical. Indeed, beginning around March 2007, Varsha Sabhnani refused to provide Samirah with even the semblance of adequate clothing, requiring her to wear tattered sweat pants and a top made from old rags and the cut remnants of a dress. Various witnesses testified that Samirah wore "torn or tattered,"

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[1] The companies were principally engaged in the export of perfume, towels, body sprays and soaps to Dubai, the United Arab Emirates, Saudi Arabia, Singapore, Bahrain and other foreign markets.

"messy" clothing, rags "used for cleaning the floor" and clothing that left her "private part . . . visible." Tr. 1786, 3834.

Samirah was subjected to extremely harsh physical and psychological treatment in the Sabhnanis' home. On one occasion sometime before 2005, for example, Samirah drank milk directly from a container, without using a glass; the incident was reported to Varsha Sabhnani by one of her daughters. Varsha responded by beating Samirah and pouring scalding hot water on her arm. At her mother's instruction, one of Varsha's daughters took a photograph of Samirah with the milk container. Varsha Sabhnani told Samirah that the photo would be sent to Samirah's family in Indonesia to prove that Samirah was a thief. The photo, which Varsha thereafter kept in a locked cabinet in a closet adjoining the Sabhnanis' bedroom, was introduced into evidence at the trial. It depicts the discoloration on Samirah's arm from the scalding.

The milk incident was not an isolated one. Samirah was beaten by Varsha Sabhnani with various household objects, such as a broom, an umbrella, and a rolling pin. She was punished for sleeping late, for not receiving permission to throw out the garbage, for stealing food from the trash, and for failing to clean the garage. Varsha threw boiling water on Samirah on at least three separate occasions. She also mutilated Samirah, pulling on Samirah's ears until they bled, causing scabs and scars, and cutting Samirah with a knife, leaving scars on her face and various parts of her body. Wearing plastic supermarket bags on her hands, Varsha Sabhnani on more than one occasion pulled on Samirah's ears and dug her fingernails into the flesh behind them, causing

blood to trickle down Samirah's neck. She punished Samirah for various alleged misdeeds by forcing her to eat large quantities of hot chili peppers until Samirah vomited or moved her bowels uncontrollably. Varsha forced Samirah to walk up and down flights of stairs many times in succession. Samirah was required to bathe several times in a row, sometimes with her clothes on, and was not infrequently made to work while wearing wet clothing. Varsha Sabhnani also cut Samirah's hair with scissors and shaved her pubic hair, threatening Samirah that if she resisted her children in Indonesia would be murdered by Mahender Sabhnani and by the couple's teenage son. Samirah "never fought back," according to her own testimony, "because [Varsha Sabhnani] always said, mind you, if you fight me off, then you [will] be killed by the mister," referring to Mahender Sabhnani. Tr. 1774. The abuse suffered by Samirah caused her to become so fearful that she would sometimes urinate on herself.

On at least three occasions, Varsha Sabhnani forced Samirah to write letters to Samirah's family in Indonesia that Varsha dictated and then took from Samirah and kept. These letters contained statements to the effect that Samirah was a "crazy person," that she walked around naked, urinated and defecated on herself, and wished to die. Tr. 2360. They also contained a statement that, when translated, was interpreted to mean that Samirah purported to curse or cast a spell on her son, Erwin, who was deceased. Varsha threatened to send these letters to Samirah's family in Indonesia, but she actually kept them in the same locked cabinet in the closet adjoining the Sabhnanis' bedroom that contained Samirah's photograph with the milk container, as well as her passport and related documents.

Subject to this recurrent abuse, Samirah often asked to return to Indonesia or to be "give[n] . . . away" to another person. Tr. 1881. When she did so, Varsha Sabhnani told her that she would have to pay money to make up for the expenses the Sabhnanis had incurred in bringing her to the United States. Varsha told Samirah that Samirah's children would be killed if she escaped. Varsha also threatened Samirah that if she ran away, Varsha would falsely report to the police that Samirah had stolen food and jewelry and by this means have Samirah sent to prison.

Most of Samirah's day-to-day supervision came from Varsha Sabhnani, who ran the Sabhnanis' household and also spoke Indonesian, Samirah's native language. However, Samirah served not only Varsha, but also Mahender Sabhnani, who often scolded her and who at least on occasion directly required Samirah to undertake various jobs, including cleaning the bathroom in his office. Samirah testified that one of the Sabhnanis' daughters "maybe . . . [felt] pity" for her and intervened on her behalf one day after Samirah was hit with a telephone, telling her mother that she would watch Samirah eat a raw chili pepper but then helping Samirah to throw it away. Tr. 1821. Mahender Sabhnani, in contrast, reported on Samirah's supposed misdeeds to his wife:

> *Q.* Did you sometimes get punished for things that you did that the Missus didn't see you do?
>
> *A.* Yes.
>
> Yes. The Mister would report to the Missus that I slept in the bathroom upstairs and the Missus would immediately hit me.

Tr. 1848.

Mahender informed Varsha Sabhnani on one occasion that he had seen Samirah eating food from the garbage and on at least one other that he had found Samirah sleeping in a bathroom.[2] These incidents resulted in Varsha's physically abusing the maid. Insofar as the record reveals, Mahender Sabhnani was not present on the occasions of Varsha Sabhnani's most violent physical abuse. He was present, however, when Samirah was forced to wear dripping wet or grossly inadequate clothing that left her body exposed. He saw his wife tear paper on which she had forced Samirah to write into small pieces and then throw it on the floor, only to require Samirah to pick the pieces up, one by one. Moreover, various marks on Samirah's body resulting from Varsha's maltreatment, as well as Samirah's swollen and mutilated face, were clearly visible to Mahender Sabhnani during the time Samirah lived in his home and served him.

In late 2004 and early 2005, the Sabhnanis acquired the services of Enung, another woman from Indonesia. Forty-seven years old, Enung, who had completed only the first grade and who, like Samirah, spoke no English, was also recruited by Mrs. Joti. A sister of Varsha's, Kareena Deepak Kirpalani, trained Enung at Kirpalani's residence in Indonesia and, along with Mrs. Joti and Kirpalani's husband, helped Enung acquire the necessary travel docu-

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[2] In this instance, Samirah, who was washing an upstairs bathroom, fell asleep. Mahender told Varsha that Samirah "was not washing," but that "she was sleeping in the bathroom." Tr. 1869.

ments to come to the United States. Enung's I-94 Departure Form authorized only a brief stay of no more than six months. Nevertheless, Enung began work for the Sabhnanis immediately upon her arrival in the United States. She was met by Varsha and Mahender Sabhnani at the airport in January 2005. Varsha took Enung's passport and related travel documents and kept them in the same locked cupboard in the closet adjacent to the Sabhnanis' bedroom in which she also kept Samirah's passport and related documents, the photo of Samirah with the milk container, and the letters Samirah was required to write. Enung's passport remained there until discovered by law enforcement agents in May 2007, nearly two years after Enung was required to depart the country and two-and-one-half years after she began work for the Sabhnanis.

Enung, like Samirah, testified that she was made to work lengthy hours – from about 4:00 or 5:00 A.M. until late at night, seven days a week – and that she was generally denied food, sleep, and even medical care when sick or injured. Both Samirah and Enung testified to numerous occasions on which they were driven by hunger to eat food from the trash.

Enung was also a witness to Samirah's maltreatment at Varsha Sabhnani's hands – maltreatment that appears to have worsened during the period after Enung's arrival. Enung observed Varsha hit Samirah with various household implements, pull on Samirah's ears, and throw hot water on her. She, like Samirah, testified that Samirah was required to wear eyeglasses with tape and plastic obscuring the lenses. Enung was present on many occasions when Varsha Sabhnani forced Samirah to

eat whole raw chili peppers or chili powder mixed with salt, often until Samirah became violently ill. On one occasion Samirah refused to eat chili peppers. Varsha Sabhnani first threatened to have her drink cleaning fluid and then required her to take off her clothes and stand naked while Enung put tape on Samirah's body and ripped it off, causing Samirah to scream in pain.

Enung herself was not immune from these more atrocious forms of abuse. Varsha Sabhnani forced Enung to walk up and down stairs repeatedly as punishment for supposed misconduct. She required Enung to cut up her own clothing. On one occasion, after Enung was accused of stealing two pieces of chocolate, she was forced to stand in one place for approximately ten hours – from early in the morning until about 4:00 in the afternoon. Varsha and Mahender Sabhnani, as well as their son, laughed at her while she was being punished in this manner. On another occasion when Varsha Sabhnani was cooking, Enung handed her the wrong spice. Varsha hit Enung in the face with a metal spoon, causing Enung's face to bleed and leaving a scar. Varsha also struck Enung with her fist and with a glass Pyrex cooking dish.

The Sabhnanis left the country for about two months each summer. So far as the record shows, the maids did not leave the residence or otherwise attempt to escape during these periods. Varsha told Enung that if she ran away, the police would shoot her. She also threatened that if Enung left, Enung's husband in Indonesia, who had received advance payment for Enung's services, would be arrested. During at least one of these summer absences, the Sabhnanis' large refrigerator was chained shut. The

Sabhnanis on more than one occasion failed either to leave adequate food for the maids or to arrange for its provision. Samirah and Enung begged for food in these instances from both Deborah Litras, who worked for Mahender Sabhnani as the export manager of his businesses, and Anthony Pascarella, the Sabhnani's gardener, both of whom had brief contact with the maids on a few occasions and both of whom testified at trial.

In addition to providing the maids with food, Litras also mailed several letters on their behalf. After receiving the first of these letters, posted in July 2006, from the maids, Litras obliterated the return address on the envelope, concerned that if the letter was returned to the Sabhnanis, "that it might present a problem" for the maids, and she "really didn't want them to be in any kind of trouble if this was something that they weren't supposed to be doing." Tr. 3855. After posting this first letter on their behalf, Litras thereafter saw the maids only rarely: "Then I didn't see them ever, outside, by a shed, or else anything. I started noticing that I was never seeing them at all." Tr. 3858.

The letter posted in July 2006 was received by Samirah's children in Indonesia and was introduced at trial. In it, Samirah inquired after her children and pleaded for their help: "[Y]ou must do the midnight prayers if you want your mother to live and be together with you again." Tr. 2055. She informed them that she was being tortured, not allowed to eat or sleep, that she was forced to take repeated baths, and that she was not permitted to wear adequate clothing in the cold. She stated, "I don't have the strength to work here anymore." Tr. 2052. Samirah asked her children to pray for her return and also to

seek out a witch doctor to cast a spell "so that the Missus would send me home and pay for it." Tr. 2055. She advised her daughter, Lita, to seek her return by contacting Varsha Sabhnanis' relations, but not to disclose the true reason:

> Lita, don't say that your mother told you of being tortured, denied food, deprived of sleep, told to take a bath 30 times, clothes are torn to shreds, not allowed to wear double clothing in the winter. Lita, just say this, the children are grown, and working. So it's my turn to rest.

Tr. 2056. Samirah testified that she gave these instructions "[b]ecause if the Missus found out" she was complaining to her children, she would "get beat up some more."[3] Tr. 2062.

Samirah and Enung approached Litras again in April 2007, some nine months after this letter was posted, when Litras was alone in Mahender Sabhnani's office and the Sabhnanis were not at home. The maids were "disturbed and rushed," "[u]pset." Tr. 3861. They came in together and threw raw chili

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[3] After receiving the letter, Lita and Leo, one of Samirah's sons, approached Mrs. Joti seeking to have Samirah returned to Indonesia. Mrs. Joti told them that they would have to wait until Samirah's "contract" had expired, Tr. 2557, and told them that they would have to pay 40 million rupiahs, or approximately $4400. During one of several telephone conversations between Mrs. Joti and Leo, Mrs. Joti falsely told him that his mother was in Los Angeles. On another occasion she told him that his mother was "doing well" in America. Tr. 2732. In her third conversation with Leo, Mrs. Joti became angry and told Leo, who testified at trial, that she could have Samirah murdered.

peppers on the ground. Using gestures, they appeared to communicate that they were forced to eat them. Samirah, whose hair Litras described as "chopped up," showed Litras a large gash behind Samirah's right ear and a bruise below her left shoulder. Tr. 3863. According to Litras, "[t]he language barrier was very difficult," but the maids appeared to act out a scenario in which one maid was hit with an object and then was made to hit the other. Tr. 3874. Both maids were crying. Samirah and Enung provided Litras with another letter, which she also posted, resolving to herself that she "had to try to find out what was happening here." Tr. 3874. A few weeks later, on a morning on which Mahender Sabhnani was present in the office, Litras saw Samirah crouching at the office door that led down to the basement with blood dripping from her hairline. Litras gestured Samirah away so that Mahender Sabhnani would not see her.

Finally, on the evening of May 12, 2007, Samirah, who had been beaten about the face by Varsha in the preceding days and who testified that she was fearful she would soon be killed, ran away from the Sabhnanis' house carrying the expired Indonesian passport that Varsha had returned to her the previous month. Samirah entered a Dunkin' Donuts store in Syosset early the next morning. The people inside the Dunkin' Donuts were unable to communicate with Samirah because she did not speak English, but Samirah attempted to tell them of her plight. Witnesses testified that Samirah showed them the marks, bruises, cuts, and scars on her face and arms and made gestures as if she were pinching or slapping herself. A security videotape introduced at trial captured Samirah motioning towards her ears and pointing out her other injuries. The mother

of the store manager, a certified nursing assistant, saw the wounds behind Samirah's ears and the marks on her forearms and told her son to call the police. Samirah was taken to the Nassau University Medical Center, where her treating physician diagnosed "[m]ultiple physical abuse." Tr. 2874. Doctors and nurses treated her ear wounds, which were infected, and Samirah, through an interpreter, told her treating physician about the abuse she had suffered. Police officers recovered from Samirah her passport, as well as a plastic bag Samirah had taken with her when she fled the Sabhnani's house, containing a piece of paper with Varsha's name and address on it, a number of other papers, and a single chili pepper. Police took a number of photographs of Samirah's injuries, including pictures of her ears, face, forearms, chest, neck, and back, which were admitted into evidence during the trial.

In the course of the resulting investigation, agents from Immigration and Customs Enforcement ("ICE") executed two search warrants at the Sabhnanis' home. During the first search, Varsha and one of her daughters told Enung to run away and hide, and agents discovered her in a small closet underneath the basement stairs. Enung provided agents with a knife stained with Samirah's blood and tissues; both of these Enung had secreted away on Samirah's departure. Enung also showed agents a broom and rolling pin with which Varsha had beaten Samirah, and gestured to the agents that this was their use. Agents also found a blood stain on the door leading from the basement to Mahender Sabhnani's office – the location at which Litras testified that she had observed Samirah crouching, with blood dripping from her hairline. DNA testing confirmed that the blood found on the door was Samirah's.

Agents also discovered that the Sabhnanis had placed dead bolt locks on the outside of both doors to the basement bathroom. This bathroom was used solely by Samirah and Enung. Samirah testified that at the time the locks were installed, Varsha told her that she intended to lock Samirah up in the bathroom because she was expecting a guest from the Indies and was embarrassed about having someone in her home "who [didn't] look good." Tr. 2272. Enung testified that Varsha threatened to lock Samirah in the bathroom with no food and to give both maids an "injection" there that would "dry up the blood" or make them "go crazy." Tr. 3245. Enung testified that she was rendered so fearful by virtue of this threat that she couldn't eat.

The Sabhnanis were arrested on May 14, 2007 on charges of committing forced labor. In a superseding indictment filed September 18, 2007, the Sabhnanis were charged with the following crimes: (1) two counts of forced labor or attempted forced labor in violation of 18 U.S.C. §§ 1589(a) and 1594(a);[4] (2) one count of conspiracy to commit forced labor in violation of 18 U.S.C. §§ 371 and 1589(a); (3) two counts of harboring aliens or attempting to harbor aliens in vi-

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[4] U.S.C. § 1589 provides in relevant part as follows:

> (a) Whoever knowingly provides or obtains the labor or services of a person by . . . means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person . . . shall be punished as provided under subsection (d).

18 U.S.C. § 1589(a). Section 1594(a) prohibits attempting to commit forced labor, peonage, and document servitude, among other offenses.

olation of 8 U.S.C. § 1324(a)(1)(A)(iii) and (v)(II);[5] (4) one count of conspiracy to harbor aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(iii) and (v)(I); (5) two counts of peonage or attempted peonage in violation of 18 U.S.C. §§ 1581(a) and 1594(a);[6] (6) one count of conspiracy to commit peonage in violation of 18 U.S.C. §§ 371 and 1581(a); (7) two counts of document servitude in violation of 18 U.S.C. §§ 1592 and 1594(a);[7] and (8) one count of conspiracy to commit document servitude in violation of 18 U.S.C. §§ 371 and 1592. A seven-week trial followed; the evidence at trial consisted of testimony from many witnesses,

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[5] 8 U.S.C. § 1324(a)(1)(A) makes criminally liable any person who:

> [K]nowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection . . . such alien in any place, including any building or any means of transportation . . .

8 U.S.C. § 1324(a)(1)(A). Section 1324(a)(1)(A)(v)(II) prohibits aiding and abetting a violation of § 1324(a)(1)(A). Section 1324(a)(1)(A)(v)(I) prohibits conspiracy to commit the substantive offenses.

[6] 18 U.S.C. § 1581(a) prohibits "hold[ing] or return[ing] any person to a condition of peonage . . ." 18 U.S.C. § 1581(a).

[7] 18 U.S.C. § 1592 provides:

> Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person . . . in the course of a violation of [§§ 1581, 1589, and 1594(a)] [or] with intent to violate [§§ 1581, 1589, and 1594(a)] . . . shall be fined under this title or imprisoned . . . .

18 U.S.C. § 1592.

including Samirah, Enung, Hespeler, Litras, Pascarella, Samirah's relatives from Indonesia, Samirah's treating physician, and law enforcement agents, as well as physical evidence recovered from the house and numerous photographs.

The defense case consisted primarily of the testimony of visitors to the residence who observed the maids and noted nothing unusual. During summation, counsel for both Varsha and Mahender Sabhnani contended that Samirah's and Enung's testimony could not be believed, and that, despite her denials, there was reason to believe that the marks on Samirah's body were the product of kerokan, an Indonesian folk remedy practiced by Enung that involved rubbing a hard object on the skin. Defense counsel suggested that Samirah was consumed with hatred of Varsha Sabhnani because she believed Varsha had cast a spell on her adult son, Erwin, who died in 2006, while Samirah was working for the Sabhnanis. Seeking financial reward, Enung supposedly manipulated Samirah's mental state to the point that Samirah was willing to testify about abuses that never occurred, while Enung falsely corroborated her story. Following the trial, both Varsha and Mahender Sabhnani were convicted on all counts.

DISCUSSION

I. Pretrial Motions

A. The Venue Motion

Appellants contend that the district court improperly denied their motion pursuant to Fed. R. Crim. P. 21(a) for a change of venue. We review the district court's disposition of such a motion for abuse of discretion. *United States* v. *Maldonado-Rivera*, 922 F.2d

934, 967 (2d Cir. 1990). Rule 21(a) provides in relevant part that "[u]pon the defendant's motion, the court must transfer the proceeding against that defendant to another district if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there." Fed. R. Crim. P. 21(a). The defendant must show "a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial." *Maldonado-Rivera*, 922 F.2d at 966-67 (quoting *Sheppard* v. *Maxwell*, 384 U.S. 333, 363, 86 S. Ct. 1507, 16 L. Ed. 2d 600 (1966) (internal quotation marks omitted)). "In assessing the motion, the district court may take into account, *inter alia*, the extent to which the government is responsible for generating the publicity, the extent to which the publicity focuses on the crime rather than on the individual defendants charged with it, and other factors reflecting on the likely effect of the publicity on the ability of potential jurors in the district to hear the evidence impartially." *Id.* at 967.

The Sabhnanis contend that the prosecution generated prejudicial pretrial publicity during bail hearings on May 15 and 17, 2007. In the course of the bail proceedings, the government described the charged crimes as involving "incomprehensible brutality and violence and inhumanity." The local news media printed and broadcast stories about the matter, several of which repeated the prosecution's statement that this was a case of "modern day slavery." The tabloid newspapers dubbed Varsha "Cruella," after the Disney villain Cruella de Vil, and printed details of the methods that the Sabhnanis allegedly used to torture their victims. During the weeks following the bail hearings, in which there was a significant amount of litigation over the bail

conditions, *see United States* v. *Sabhnani*, No. 07-CR-429, 2007 U.S. Dist. LEXIS 70226, 2007 WL 2769487, at *1-2 (E.D.N.Y. Sept. 21, 2007) (order denying transfer motion), the media reported on various developments in the case, continually referring to it as the "Slave Case." The coverage also repeatedly referenced the Sabhnanis' wealth and the value and size of their home.

We conclude that the district judge did not abuse his discretion in denying the Sabhnanis' motion to transfer venue. First, we agree with the district court that the prosecution's statements regarding the character of the crimes were proper in the context in which they were made: bail hearings in which the prosecutors were arguing that the Sabhnanis were a danger to the victims and their families, justifying an order of pretrial detention. The prosecution's mention of the Sabhnanis' wealth was likewise proper in the context of arguing that the Sabhnanis were a risk of flight due to their substantial means. While a district court may consider the government's role in generating adverse publicity in deciding a motion for change of venue, legitimate advocacy at a court proceeding – even advocacy resulting in adverse pretrial publicity – does not constitute conduct for which the government is properly held responsible in a Rule 21(a) inquiry. Nor do we find any error in the district court's determination that, in any event, the press coverage appears to have been driven at least as much by comments of the Sabhnanis' counsel as by any prosecutor's statement. *See Sabhnani*, 2007 U.S. Dist. LEXIS 70226, 2007 WL 2769487, at *3 & nn.4-6.

Second, we similarly conclude that the pretrial publicity here was not so pervasive and prejudicial

as to have created a reasonable likelihood that a fair trial could not be conducted. The bail hearings took place in mid-May, and voir dire in the case began in late October, five months later. This is a shorter amount of time than has been present in some cases in which we have noted that the effects of publicity had dissipated by the time the trial began. *See, e.g., United States* v. *Yousef*, 327 F.3d 56, 155 (2d Cir. 2003). However, in *Maldonado-Rivera*, we affirmed the denial of a motion to transfer venue even though the district judge there found that the press coverage was "continuing and prominent." *Maldonado-Rivera*, 922 F.2d at 967 (describing district court's finding of "slightly more than one article per week over a three-year period"). Moreover, the record here indicates, as the district court found, that most of the press coverage tracked the frequent court proceedings in this case. *See, e.g.*, Varsha App. 10-11 (first appearance), 14-15, 22 (second bail hearing), 28-30 (indictment), 33-65 (litigation over bail conditions). Coverage of actual developments in a criminal case generally will not rise to the level of prejudicial publicity that will warrant a venue change.

Most importantly, the cases involving claims that pretrial publicity was so inherently prejudicial that a fair trial in the district could not be had draw a clear distinction between mere exposure to pretrial publicity and actual prejudgment by the venire of the issues to be decided in the case. "We must distinguish between mere familiarity with petitioner or his past and an actual predisposition against him . . . . To ignore the real differences in the potential for prejudice would not advance the cause of fundamental fairness, but only make impossible the timely prosecution of persons who are well known in the community . . . ." *Murphy* v. *Florida*, 421 U.S. 794, 800 n.4,

95 S. Ct. 2031, 44 L. Ed. 2d 589 (1975). It is true that the Supreme Court has in the past stated that publicity can so saturate a community (and be so highly prejudicial to the defendants) that courts should in such cases presume a fair trial was impossible. *See, e.g., Rideau* v. *Louisiana*, 373 U.S. 723, 724-26, 83 S. Ct. 1417, 10 L. Ed. 2d 663 (1963) (defendant was filmed, possibly without his knowledge, confessing to details of crime, and film was shown repeatedly on television in relatively small community); *see also Patton* v. *Yount*, 467 U.S. 1025, 1031, 104 S. Ct. 2885, 81 L. Ed. 2d 847 (1984) ("[A]dverse pretrial publicity can create such a presumption of prejudice in a community that the jurors' claims that they can be impartial should not be believed.") (describing the holding of *Irvin* v. *Dowd*, 366 U.S. 717, 81 S. Ct. 1639, 6 L. Ed. 2d 751 (1961)). Cases presenting this scenario are very rare, however, and have been characterized by our sister circuits as "extreme situation[s]," *United States* v. *Campa*, 459 F.3d 1121, 1143 (11th Cir. 2006) (en banc) (upholding rejection of motion to transfer venue of accused Cuban spies from Miami despite alleged pervasive prejudice against the Cuban government in the district), in which the "publicity in essence displaced the judicial process." *United States* v. *McVeigh*, 153 F.3d 1166, 1181 (10th Cir. 1998).

The Sabhnanis argue that we need not employ a presumption of prejudice here because there is actual evidence that the venire was biased. The record, however, does not establish that the venire had prejudged the Sabhnanis' case, and nothing argued to the district court or to this court suggests anything to the contrary. The Sabhnanis point to the voir dire and, in particular, to the responses to questioning by some potential jurors as evidence that these jurors,

who were excused, had been biased against them by the media coverage.[8] They also point to an e-mail sent to the court by an excused potential juror, who claimed that other members of the venire were "lying" and pretending to "live in a cave" in order to serve on the jury in the case. Varsha App. 129-30.

We have noted, in the context of the appeal from a conviction involving crimes far more notorious than the ones in this case, that "the key to determining the appropriateness of a change of venue is a searching voir dire." *Yousef*, 327 F.3d at 155. Here, as in *Yousef*, the Sabhnanis did not renew their motion to change the trial's venue directly after the jury's voir dire, nor do they object here to the voir dire's sufficiency. Moreover, in seeking a new trial before the district court post-verdict, although Varsha did point to adverse publicity, she never contended that the voir dire itself was deficient in any respect. *See id.* (taking such silence as an "indication that counsel was satisfied that the voir dire resulted in a jury that had not been tainted by publicity"). The evidence the Sabhnanis point to establishes no more than that some members of the venire had been exposed to publicity, and that some may have been reluctant to admit it. We have rejected claims that the venire was

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[8] We do not understand the appellants to be arguing that the trial jury, as opposed to the venire, was prejudiced by the media coverage. To the extent their arguments can be so construed, they were soundly rejected by the district court in its decision on the Sabhnanis' Rule 33 motion on the ground that the Sabhnanis could not demonstrate that any juror was actually exposed to prejudicial publicity. The appellants make no arguments here to demonstrate that this conclusion was erroneous in any respect.

not sufficiently impartial in cases in which the evidence that excused potential jurors had formed an opinion of the defendant's guilt or innocence based on pretrial publicity was far more substantial. *See, e.g.*, *Knapp* v. *Leonardo*, 46 F.3d 170, 176 (2d Cir. 1995) (finding no manifest error in state court's determination that jury was impartial when defendant argued that 83% of veniremen were excused because they had prejudged the case); *see also United States* v. *Higgs*, 353 F.3d 281, 308-09 (4th Cir. 2003) (affirming denial of motion to transfer venue in which majority of potential jurors had heard about the case and several stated that they had formed an opinion based on publicity). Here, neither the character of the publicity nor the extent to which potential jurors were either exposed to it or affected by it warrants the conclusion that a presumption or inference of generalized prejudice was appropriate in this case. We conclude that the district court's denial of the motion for a change of venue was not an abuse of discretion.

B. The Motion for a Psychiatric Examination

Appellants next assert that the district court erred in denying their motion for a psychiatric examination of Samirah. The motion was based on: (1) the affidavit of Dr. Barent Walsh, a clinical social worker providing therapy to "self-injuring persons," which stated, based on Dr. Walsh's examination of photographs of Samirah's injuries, that although he could not be certain since he had never seen her, the photographs showed injuries that could "be consistent with self-injury," Varsha App. 251; (2) Samirah's discharge papers from the Nassau University Medical Center, which noted that she was being referred to an "outpatient psychiatry clinic"; and (3) the affidavit of one of the appellants' daughters which

stated that she had frequently observed Samirah behaving in a "strange fashion" (for instance by urinating uncontrollably), and that she had heard Samirah state after the death of her son, Erwin, that she "deserve[d] to be punished." Varsha App. 246-47. The Sabhnanis also relied on letters written by Samirah that contained what they argued to be further evidence of Samirah's possible mental instability. Judge Platt denied the motion, which the defense renewed shortly prior to trial before Judge Spatt.[9] At that time, the defense also relied on the deposition testimony of Samirah's daughter Lita regarding information that Varsha Sabhnani had provided to her about Samirah's behavior. Judge Spatt denied the renewed motion.

"Ordering a witness to undergo a psychological examination is a drastic measure." *United States* v. *Russo*, 442 F.2d 498, 503 (2d Cir. 1971); *see also United States* v. *Kehoe*, 310 F.3d 579, 592 (8th Cir. 2002). Given the "inherent problems in allowing psychiatric examination of a witness," including "invasion of privacy, limiting availability of witnesses, [and] chilling testimony," *United States* v. *Gates*, 10 F.3d 765, 766 (11th Cir. 1993), a court should exercise its discretion to require such examinations only sparingly. Here, the Sabhnanis do not claim that Samirah was incompetent to testify, but only that the district court abused its discretion by failing to allow the defense to gather evidence of Samirah's psychological state that could have been used to im-

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[9] This matter was originally assigned to Judge Thomas C. Platt, and was reassigned to Judge Spatt shortly before trial.

peach her credibility. We conclude that this argument is without merit.

In *Russo*, where we rejected the argument that a purported "pathological liar" should have been required to undergo an independent psychiatric exam, we noted that so long as "the jury from its observation has the opportunity to appraise the credibility of the witness in the light of the facts impugning his veracity, this constitutes the constitutional safeguard of a defendant's rights." 442 F.2d at 502. This precept is fully applicable here. The jury had a full opportunity in this case to assess Samirah's credibility, and a psychiatric examination would not have added measurably to its ability to do so. Samirah testified for part or all of six days, and faced extensive cross-examination.[10] The Sabhnanis argue that because Samirah's testimony was given through an Indonesian interpreter the jury was unable to assess her tone of voice. Even assuming this to be case, however – a matter on which we express no opinion – the fact that Samirah's testimony was conveyed to the jury through the medium of an interpreter did not measurably lessen the jury's ability to assess other aspects of her testimony, such as the content of her statements, her body language, and her facial expressions. *Cf. Vasquez* v. *Kirkland*, 572 F.3d 1029, 1038 (9th Cir. 2009) (testimony by deaf-mute through two separate sets of interpreters did not deprive defendant of opportunity to cross-examine wit-

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[10] The jury also heard testimony from Samirah's treating physician at Nassau University Medical Center, Dr. Ami Attali, who testified regarding Samirah's mental state while at the hospital.

ness; jury could assess credibility because witness testified under oath and jury could observe her demeanor). The Sabhnanis also point to Samirah's testimony that Varsha Sabhnani put a spell on Samirah's son Erwin as evidence of Samirah's unstable mental condition. That the jury heard this testimony, however, only further undermines any claim that a psychiatric examination was needed to assist the jury in evaluating Samirah's state of mind.

We conclude that the district court acted well within its discretion in determining that the evidence proffered by the appellants in support of their motion was insufficient to show the need for a psychiatric exam. Dr. Walsh's affidavit, based only on a review of photographs, indicated merely that Samirah's injuries might "be consistent with self-injury" – an assertion that fell well short of demonstrating any mental instability, much less mental instability warranting the conduct of a psychiatric examination. *Cf. United States* v. *Gutman*, 725 F.2d 417, 420 (7th Cir. 1984) (finding no abuse of discretion in the district court's refusal to hold a hearing to determine whether a witness with a history of mental illness was competent to testify). Similarly, Samirah's letters, most of which Samirah testified Varsha dictated to her and forced her to write, did not demonstrate the need for investigation into Samirah's mental state and, in any event, were themselves available for assessment by the jury. The hospital discharge papers noting Samirah's referral to an outpatient psychiatric clinic do not explain the reason for the referral, but Dr. Attali testified that such a recommendation is routine for most recovering trauma victims. The district court did not abuse its discretion by declining to afford these notes much weight. Finally, neither the Sabhnani daughter's affidavit attesting to Sami-

rah's "strange" behavior – much of it, according to Samirah's later testimony, caused by the Sabhnanis' mistreatment – nor the deposition testimony of Samirah's daughter, which merely reported Varsha Sabhnani's self-serving statements, established a compelling need for Samirah's examination. The district court did not err, much less abuse its discretion, in determining that a psychiatric examination was not warranted.

II. Mahender Sabhnani's Jury Instruction and Sufficiency Challenges

Mahender Sabhnani raises two claims of error with regard specifically to his convictions. First, he contends that the charge to the jury on aiding and abetting erroneously allowed the jury to convict him on an omissions theory of liability, rather than on any affirmative acts he might have taken to aid and abet his wife's criminal conduct. This error, he contends, infected every count on which he was convicted and requires that all of his convictions be vacated. Second, he contends that the evidence was insufficient to sustain the convictions on any of the twelve counts on which the jury convicted him. We disagree with both claims.

A. Mahender Sabhnani's Jury Instruction Challenge

The government charged both defendants under the aiding and abetting statute, 18 U.S.C. § 2, as well as under the specific substantive statutes at issue. Mahender Sabhnani asserts error in approximately forty words in Judge Spatt's 792-word instruction on aiding and abetting. In particular, he contends that the district court's instruction on willfulness permitted the jury to convict him for failing

to act.[11] Because none of the statutes pursuant to which he was charged predicates liability on a failure to act, he argues, and because no common law duty to act is at issue in this case, or was part of the jury charge, this instruction was erroneous, requiring his convictions to be vacated. For the following reasons, we disagree.

A defendant challenging a jury instruction as erroneous must show "both error and ensuing prejudice," *United States* v. *Quinones*, 511 F.3d 289, 313-14 (2d Cir. 2007), and we review the jury instructions "de novo . . . viewing the charge as a whole," *United States* v. *Quattrone*, 441 F.3d 153, 177 (2d Cir. 2006) (quoting *United States* v. *Aina-Marshall*, 336 F.3d 167, 170 (2d Cir. 2003)). "De novo review leads us to [find] error if we conclude that a charge either fails to adequately inform the jury of the law, or misleads the jury as to the correct legal standard." *Id.* (quoting *United States* v. *Doyle*, 130 F.3d 523, 535 (2d Cir. 1997)) (alteration in original) (internal quotation marks omitted). We emphatically do not review a jury charge "on the basis of excerpts taken out of context," but in its entirety, *see United States* v. *Mitchell*, 328 F.3d 77, 82 (2d Cir. 2003) (quoting *United States* v. *Zvi*, 168 F.3d 49, 58 (2d Cir. 1998)) (internal

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[11] The instruction, which was given twice, reads in its entirety as follows:

> Participation in a crime is willful if action is taken voluntarily and intentionally or in the case of a failure to act with the specific intent to fail to do something the law requires to be done, that is to say, with a bad purpose either to disobey or to disregard the law.

Tr. 5035.

quotation marks omitted), to determine whether considered as a whole, "the instructions adequately communicated the essential ideas to the jury." *United States* v. *Tran*, 519 F.3d 98, 105 (2d Cir. 2008) (quoting *United States* v. *Schultz*, 333 F.3d 393, 413-14 (2d Cir. 2003) (internal quotation marks and alterations omitted)); *see also Cupp* v. *Naughten*, 414 U.S. 141, 146-47, 94 S. Ct. 396, 38 L. Ed. 2d 368 (1973) ("[A] single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge.").

At the start, we find dubious the government's claims that aiding and abetting liability may generally be predicated upon a failure to act unconnected to any legal duty to do so, that the statutes at issue created an affirmative duty to act, or that Mahender Sabhnani was properly found by the jury to have violated a common law duty that required him to act. It is a long-established principle that criminal law generally regulates action, rather than omission, and that "[f]or criminal liability to be based upon a failure to act it must first be found that there is a duty to act – a legal duty and not simply a moral duty." 1 Wayne R. LaFave, *Substantive Criminal Law* § 6.2 (2d ed. 2008).[12] This general principle, that omissions may serve as the basis of criminal liability only if there is an affirmative duty to act, is equally applicable when the crime charged is aiding and abetting.

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[12] Such a legal duty to act can arise from a statute specifically creating the duty – the duty to file one's tax returns, for instance, *see* 26 U.S.C. § 7203 – or by extrapolation from a different statute, the common law, or contract. 1 LaFave, *Substantive Criminal Law* § 6.2.

See United States v. *Labat*, 905 F.2d 18, 23 (2d Cir. 1990) ("To convict a defendant on a theory of aiding and abetting, the government must prove that the underlying crime was committed by a person other than the defendant and that the defendant acted, or failed to act in a way that the law required him to act, with the specific purpose of bringing about the underlying crime."). Here, none of the statutes pursuant to which Mahender was convicted expressly impose an affirmative duty to take action, lest a crime be committed.[13] And even assuming, *arguendo*,

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[13] The document servitude statute, 18 U.S.C. § 1592, which criminalizes the knowing destruction, concealment, removal, confiscation, or possession of immigration documents of another, may come the closest – predictably enough, as criminal possession statutes often straddle the line between regulating an act and an omission. *See* Sanford H. Kadish et al., *Criminal Law and Its Processes: Cases and Materials* 207 (8th ed. 2007). We have held that constructive possession – established by a showing that "a defendant knowingly had the power and the intention at a given time to exercise dominion and control over [an item]" – can be sufficient to render a defendant criminally liable under such a statute. *United States* v. *Chavez*, 549 F.3d 119, 129 (2d Cir. 2008) (quoting *United States* v. *Finley*, 245 F.3d 199, 203 (2d Cir. 2001)) (internal quotation mark and alteration omitted) (constructive possession of a firearm was sufficient for a conviction under 18 U.S.C. § 924(c)); *see also United States* v. *Jones*, 531 F.3d 163, 168-69 (2d Cir. 2008) (constructive possession of narcotics was sufficient for a conviction under 21 U.S.C. § 841(a)(1)). Under this definition of constructive possession, one could violate § 1592 by forming the specific intent to possess the immigration documents of another while having knowing control over them – in theory, without taking any affirmative act. Even accounting for this possibility, however, possessory offenses do not expressly impose affirmative duties to act in the manner of traditional omissions statutes, which, in effect, require affirmative conduct to be taken to avoid commis-

that Mahender Sabhnani owed a common law duty to the maids that was sufficiently well established in our legal tradition and practice that it constitutes part of the background common law against which these statutes should be interpreted, *see, e.g., Morissette* v. *United States*, 342 U.S. 246, 250, 72 S. Ct. 240, 96 L. Ed. 288 (1952); *United States* v. *Rybicki*, 354 F.3d 124, 135-36 (2d Cir. 2003) (en banc), the jury here was not charged on the nature of this duty nor instructed as to the factors it should consider in determining whether the duty was discharged. *See Jones* v. *United States*, 308 F.2d 307, 310-11, 113 U.S. App. D.C. 352 (D.C. Cir. 1962) (reversing on plain error review where a jury was not instructed as to the nature of the common law duty that was the basis for omissions liability).

We need not decide the question whether in the circumstances of this case Mahender Sabhnani could properly be convicted based upon an omission to act, however, because we reject his claim that the district court's instruction on willfulness, considered in the context of the aiding and abetting instruction as a whole, rendered the instructions so confusing as to permit the jury to convict him on this basis. To be clear, the jury was instructed that participation in a crime is willful if action is taken voluntarily and intentionally, or in the case of a failure to act, with specific intent to fail to do something the law re-

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sion of the crime. *See, e.g.*, 18 U.S.C. § 2250(a) (knowing failure to register or update a registration as a sex offender by one who is required to do so); 50 U.S.C. § 462 (failure to perform a duty of registration by one required to do so under the Military Selective Service Act).

quires. Drawn nearly verbatim from the model jury instruction in the leading treatise on the subject, see 1 Leonard Sand et al., *Modern Federal Jury Instructions – Criminal*, P 11.01, at 11-4 (2008 ed.), this instruction was not inaccurate, however, but simply extraneous to this case – at least absent further instruction as to a legal theory that would support liability based on a failure to act.

When a jury charge contains language that could potentially confuse the jury as to the applicable law, we look to see whether the charge as a whole adequately instructed the jury as to the applicable legal standard. *Cupp*, 414 U.S. at 146-47. Here, the jury was never told that either Mahender or Varsha Sabhnani could be convicted of aiding and abetting based upon a failure to act. Indeed, immediately before the instruction on willfulness, the jury was informed that "[i]n order to aid or abet another to commit a crime, it is necessary that the defendant willfully and knowingly associate herself in some way with the crime and that she or he willfully and knowingly seek *by some act* to help make the crime succeed." Tr. 5035 (emphasis added). Immediately after the challenged language, the jury was instructed that the "mere presence of a defendant where a crime is being committed, even coupled with knowledge by the defendant that a crime is being committed, or the mere acquiescence by a defendant in the criminal conduct of others, even with guilty knowledge, is not sufficient to establish aiding and abetting." Tr. 5036. *Cf. United States* v. *Elfgeeh*, 515 F.3d 100, 134-35 (2d Cir. 2008) (finding it "highly unlikely" that jury relied on erroneous sentence that was immediately preceded and followed by correct statements of the charge). An aider and abettor, the district court said, must "know that the crime is be-

ing committed and *act* in a way which is intended to bring about [its] success." (emphasis added).

The repeated emphasis in the instructions on the proposition that an aider and abettor must "seek by some act to make the crime succeed" was further stressed in the judge's summary of the charge. The district court instructed the jury to ask itself three questions to determine whether a defendant aided or abetted the commission of a crime:

> Did the defendant participate in the crime charged as something she or he wished to bring about?
>
> Did the defendant associate herself or himself with the criminal venture knowingly and willfully?
>
> Did the defendant seek *by her or his actions* to make the criminal venture succeed?

Tr. 5036 (emphasis added). If the government proved beyond a reasonable doubt that the defendant did these things, the district court instructed, "then the defendant is an aider and abettor and therefore guilty of the offense." But "if on the other hand your answers to any one of these series of questions . . . is no," Judge Spatt continued, "then the defendant is not an aider and abettor and you must find him or her not guilty as to aiding and abetting." Tr. 5036-37.

We conclude that the charge's repeated emphasis on the necessity of acting in order to aid and abet, coupled with the crystal clear summary, was sufficient to ameliorate any possible confusion that might conceivably have arisen from the willfulness instruction. *See Brown* v. *Greene*, 577 F.3d 107, 111-12 (2d Cir. 2009) (collecting cases upholding jury charges

containing language that might have created some confusion about the burden of proof, because the charges as a whole made clear that the cases were governed by the "beyond a reasonable doubt" standard); *United States* v. *Locascio*, 6 F.3d 924, 941 (2d Cir. 1993) (ambiguous summary of element did not warrant reversal where earlier discussion of element was clear). This was not a case in which the jury instructions were insufficiently detailed as to an essential element of the crime *and* were never clarified by other language, such that the jury could have convicted based on a legally erroneous theory. *See, e.g.*, *United States* v. *Hassan*, 578 F.3d 108, 129-34 (2d Cir. 2008) (instructions that failed to explain to jury that defendant needed to have intent to import particular controlled substance and that other substances referenced in the evidence were not controlled substances left open possibility for jury to convict on importation of other substances that were not illegal). Here, the instructions clarified what was required to convict, and the judge's three-question summary of the charge was perfectly clear, removing the possibility of any confusion on the jury's part. *Cf.* *United States* v. *Moran*, 493 F.3d 1002, 1009-10 (9th Cir. 2007) (while instructions might have had "minor ambiguity" after a "careful picking apart" of their wording, clear summarizing or overview paragraph that conveys basic point to jury can cure potential error).

Mahender Sabhnani makes two arguments in reply. First, he contends that Judge Spatt erroneously believed that he could be convicted for aiding and abetting based solely on his failures to act. To be sure, when counsel objected to the instruction on willfulness during the charging conference, Judge Spatt did overrule the objection, suggesting that the

employer of a domestic servant does have an obligation to act when he allows "for five years . . . beatings, deprivation, lack of food, sleeping on the floor, wearing tattered gowns, [and] hit[s] with a stick" to take place in his home. Tr. 4427. Notably, however, in denying Mahender's Rule 29 motion, the judge noted that "there was sufficient evidence at the trial to prove that Mahender affirmatively acted with the specific intent to advance the crimes alleged in the indictment." Even more importantly, the jury only heard the instructions, not Judge Spatt's opinion at the charging conference, and our concern on appeal is the *effect* of jury instructions, not "the district court's *purpose* in stating the jury instructions as it did." *Hassan*, 578 F.3d at 132. Mahender points next to the government's summation. In his sole reference to the necessary requirements for aiding and abetting, the government attorney stated without objection during the main summation that:

> You don't have to have actually committed the crime to be an aider and abettor. All that needs to be established is that somebody else committed the crime, and that you knowingly and willfully associated yourself with that other person in some way to help with the crime. Help with the crime. And that can be done by actions, or it can be done by a failure to act.
>
> A failure to act with specific intent, to fail to do something the law requires.

Tr. 4693. Mahender contends that these words created a "not insubstantial" risk that the willfulness instruction led the jurors to convict him on an invalid basis. Mahender's Br. 29. Here, however, we have already determined that the jury instructions, read as

a whole, clearly apprised the jury of what it was required to find in order to convict. We agree that a party's summation can heighten the *already present risk* that an erroneous jury instruction may mislead the jury. *See, e.g., United States* v. *Joseph*, 542 F.3d 13, 18-19 (2d Cir. 2008). But that situation is not this case. The jury instructions, which we presume that jurors follow, *see, e.g., United States* v. *Stewart*, 433 F.3d 273, 310 (2d Cir. 2006), were clear that Mahender could not be convicted solely because he knew of Varsha's crimes or acquiesced in her actions, without acting himself. And to the extent the prosecutor's summation did misstate the applicable law, Mahender raised no objection below and does not press the issue here in those terms.

Given our conclusion that the instructions as a whole adequately conveyed to the jury the law it was to apply, we need not and do not address Mahender's argument that the error he alleges was sufficiently prejudicial to taint each of his convictions, including the four separate conspiracy convictions to which the challenged instructions did not apply. We conclude simply that the aiding and abetting instruction, considered as a whole, adequately conveyed to the jury the necessary and applicable requirements for aiding and abetting, and that Mahender's argument to the contrary is without merit.

B. Sufficiency of the Evidence

Mahender also challenges the sufficiency of the evidence to support his convictions for forced labor, peonage, document servitude, and conspiracy to commit these crimes. We review de novo challenges to the sufficiency of the evidence. *United States* v. *Abdulle*, 564 F.3d 119, 125 (2d Cir. 2009). In reviewing a claim that the evidence was insufficient to sus-

tain a defendant's conviction, "we view the evidence in the light most favorable to the government, drawing all inferences in the government's favor and deferring to the jury's assessments of the witnesses' credibility." *United States* v. *Parkes*, 497 F.3d 220, 225 (2d Cir. 2007) (quoting *United States* v. *Arena*, 180 F.3d 380, 391 (2d Cir. 1999)) (internal quotation marks omitted). "We will sustain the jury's verdict[s] so long as *any* trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (quoting *Jackson* v. *Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)) (internal quotation marks omitted).

Mahender's main contention on appeal is that the trial evidence was insufficient to show he had knowledge that Varsha was threatening or physically abusing the maids – and thus *a fortiori* that the evidence was inadequate to establish his intent to participate in the crimes of forced labor and peonage, whether as a principal, an aider and abettor, or a conspirator. Mahender does not directly challenge the sufficiency of the evidence to support his convictions for document servitude and conspiracy to commit document servitude, but instead argues that because the evidence was insufficient to sustain his forced labor and peonage convictions, he cannot be guilty of these "derivative" offenses. For the following reasons, we disagree with these contentions.

1. Forced Labor and Peonage Convictions

With regard to the forced labor charges, 18 U.S.C. § 1589 at the time of the Sabhnanis' convictions prohibited "knowingly provid[ing] or obtain[ing] the labor or services of a person by," *inter alia*, "threats of serious harm to, or physical restraint against, that person," "by means of any scheme, plan

or pattern intended to cause the person to believe that, if the person did not perform such labor . . . that person or another person would suffer serious harm or physical restraint," or "by means of the abuse or threatened abuse of law or the legal process." 18 U.S.C. § 1589(a)(1)-(3) (2000). The jury convicted Mahender of obtaining the labor or services of Samirah and Enung both "through threats of serious harm or physical restraint against [them]" and "through a scheme, plan or pattern intended to cause [them] to believe that non-performance would result in serious harm." Verdict Sheet 2-4. The peonage statute, 18 U.S.C. § 1581(a), prohibits "hold[ing] or return[ing] any person to a condition of peonage . . . ." To prove peonage, "the government must show that the defendant intentionally held a person against his or her will and coerced that person to work in order to satisfy a debt by (1) physical restraint or force, (2) legal coercion, or (3) threats of legal coercion or physical force." *United States* v. *Farrell*, 563 F.3d 364, 372 (8th Cir. 2009).

At the start, the jury had a more than ample basis on which to conclude that Mahender knew of both the threatened and actual maltreatment of Samirah and Enung. "[J]urors are entitled, and routinely encouraged, to rely on their common sense and experience in drawing inferences" of a defendant's knowledge and his criminal intent. *United States* v. *Huezo*, 546 F.3d 174, 182 (2d Cir. 2008). Here, Samirah and Enung lived and worked in Mahender's home – a home from which he also operated his business – for five and two-and-a-half years, respectively. The jury was entitled to credit the maids' testimony that during this time Mahender witnessed his wife humiliate them – when, for instance, Enung was required to stand in one place until she confessed to stealing

chocolate and Samirah was forced to pick up one by one the tiny pieces of paper that Varsha Sabhnani had just thrown to the ground. There was substantial evidence, moreover, that Mahender observed Samirah eat from the trash and wear rags that were inadequate even to cover her body. Indeed, Enung identified one such rag and confirmed that Mahender, along with the rest of the family, observed Samirah wear it every day – even after it had been repeatedly cut up and resewn at Varsha's command, "every time [Samirah] made [a] mistake." Tr. 3196. Samirah testified that Mahender saw her "every day" between 2005 and 2007, Tr. 2367 – a period during which Varsha repeatedly cut Samirah on the face with a knife and, indeed, on one occasion (after a report from her husband) beat Samirah about the face with an umbrella, leaving Samirah's face bleeding and swollen. Tr. 1855-57. Samirah testified that Mahender saw her wearing rags and that he "[saw her] face, . . . the clothings . . . [and] all the marks from the beating from missus. I would cry and the mister would look at me." Tr. 2368. Litras, Mahender's employee, did not live in the Sabhnani household and saw the maids only infrequently. Tellingly, however, even apart from the injuries the maids directly showed her in April 2007, she testified to noticing their "very messy . . . tattered and torn" clothing and, on one occasion, blood dripping from Samirah's hairline. Tr. 3860. The jury clearly had more than ample evidence from which to infer Mahender's awareness of the maids' plight.

There was also sufficient evidence of Mahender's intent to use Varsha's threats and maltreatment against the maids in order to obtain their labor. Samirah testified that on one occasion when she fell asleep cleaning a bathroom of one of the children, "mis-

ter told missus that Sami [Samirah] was not washing, but . . . was sleeping in the bathroom" and Varsha Sabhnani "came with something to hit." Tr. 1869. Samirah, afraid, ran away and urinated by the stairs, soiling Mahender's shoes as two of the children cried. Samirah further testified as follows:

> *Q.* Did you sometimes get punished for things that you did that the Missus didn't see you do?
>
> *A.* Yes.
>
> Yes. The Mister would report to the Missus that I slept in the bathroom upstairs and the Missus would immediately hit me. And another time . . . it was during the fasting months for the Muslims. I couldn't fast because I didn't eat in – I ate [food] from the garbage, and the Mister saw it, and told the Missus about it, and immediately the Missus got very angry. "You again stole the food?" And I said I found it in the garbage, and I was hit.

Tr. 1848-49. It is of no importance that, as Mahender points out, Samirah testified that he was not present when Varsha hit Samirah for eating the food, nor does it matter whether he was present on the other occasions when she was punished after he reported her misdeeds. The jury was not required, as Mahender contends, to infer that he was acting charitably by reporting the maids' conduct to his wife. On the contrary, the jury was entitled to infer from these incidents and from the other evidence of Mahender's knowledge of abuse that when Mahender reported Samirah's conduct to Varsha, he knew how she would react.

Mahender contends that even if there is sufficient evidence to support his conviction for forced labor, his peonage conviction is infirm because there was no direct evidence that he held Samirah and Enung in involuntary servitude in satisfaction of a real or alleged debt. Samirah, Enung, and Samirah's daughter, Lita, testified that Varsha told them repeatedly that if the maids wanted to be returned to Indonesia they would have to reimburse the costs of bringing them to the United States. Enung specifically testified that she did not run away from the Sabhnanis' residence in part because she "still owe[d]" months of work to Mahender and Varsha. "I was very frightened. I didn't dare to go out of the house prior to the debt being paid off." Tr. 3188. Mahender concedes that this testimony, if credited, might be adequate to support his wife's conviction. He contends, however, that it is insufficient to establish *his* intent to hold the maids in satisfaction of a debt because he "was not present during any conversation about repaying money." Mahender's Br. at 58. We disagree that this is the relevant question, and that the evidence was insufficient in any respect.

18 U.S.C. § 1581(a) prohibits the holding of a person in "a condition of peonage." Peonage is compulsory service in payment of a debt that can be real or artificially created. *See Bailey* v. *Alabama*, 219 U.S. 219, 242, 31 S. Ct. 145, 55 L. Ed. 191 (1911); *Pierce* v. *United States*, 146 F.2d 84, 86 (5th Cir. 1944). Here, the jury was entitled to infer first that Mahender knowingly participated in the creation of an obligation on the maids' part to work. The jury was entitled to infer that the appellants paid for the maids' travel to the United States based not only on the involvement of Varsha Sabhnani's family, but also upon Varsha's statements that this money had to

be repaid if the maids were to leave. Samirah testified, for instance, that when she begged to be given away she was told by Varsha that she was brought to the United States in an airplane and that if she was to be given to someone else, that cost would have to be paid back: "[T]he missus answered, you think I have money tree? You came here with money. If you had 100 million [rupiahs], I'll give you to someone else." Tr. 1881. Enung also testified that her salary was paid "up-front" in its entirety, and that Varsha was supposed to be the one paying it. The jury was permitted reasonably to infer that Mahender knew of these payments, and that they evinced an intent to create a debt-like obligation on the maids to work. *Cf. Pierce*, 146 F.2d at 85-86 (evidence sufficient to support peonage conviction when defendant, among other acts, paid the full fine owed by incarcerated women in exchange for them agreeing to work for him); *Bernal* v. *United States*, 241 F. 339, 341 (5th Cir. 1917) (defendant convicted of peonage paid for victims' transportation to come to work for her).

Second, the evidence also sufficiently demonstrated that Mahender, who benefitted from the maids' labor, knew that the maids were being forced to work and that the maids were completely dependent on the Sabhnanis for food, clothing, and shelter, the family's provision of which contributed to the maids' obligated status. *Cf. Pierce*, 146 F.2d at 85-86 (defendant contributed to victims' indebtedness by buying them clothes and other gifts). Indeed, the record shows that during the summer months when the Sabhnanis departed, neglecting to leave adequate provisions for the maids, it was Mahender who called Litras to put her in touch with his wife, who instructed Litras to obtain food – usually many loaves of bread – for the maids, and to pay for it with petty

cash from Mahender's office.[14] From the evidence that Mahender reported on Samirah when she foraged in the garbage for something to eat, the jury was entitled to infer both that Mahender knew the maids were in a condition of abject dependence, and that he both intended and acted to keep them in that state. Under these circumstances, the evidence supported the conclusion that Mahender, having knowingly contributed to the creation of the maids' indebted situation and knowing of their dependence on the family, forced the maids to work through the threat of violence from his wife. We therefore conclude that there was sufficient circumstantial evidence from which the jury could infer that Mahender acted to aid and abet the holding of the maids in satisfaction of their "obligations" to the Sabhnanis.

For substantially the same reasons, we also reject Mahender's claim that the evidence was insufficient to support his convictions for conspiracy to commit forced labor and peonage. The existence of a criminal agreement between two persons can be inferred from circumstantial evidence. *Huezo*, 546 F.3d at 180; *see also United States v. Borelli*, 336 F.2d 376, 384 (2d Cir. 1964) (Friendly, J.) ("Although it is usual and often necessary in conspiracy cases for the agreement to be proved by inference from acts, the gist of the offense remains the agreement, and it is therefore essential to determine what kind of agree-

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[14] Litras testified that generally speaking her only contact with the maids during the summer months was on these occasions when she passed food to them through a partially opened door – and that she never saw the maids outside when the Sabhnanis were away.

ment or understanding existed as to each defendant."); *United States* v. *Amiel*, 95 F.3d 135, 144 (2d Cir. 1996) ("A tacit understanding will suffice to show agreement for purposes of a conspiracy conviction. There need not be any written statement or even a speaking of words which expressly communicates agreement."). As to a defendant's participation, even "a single act may be sufficient for an inference of involvement . . . if the act is of a nature justifying an inference of knowledge of the broader conspiracy." *Huezo*, 546 F.3d at 180 (quoting *United States* v. *Tramunti*, 513 F.2d 1087, 1112 (2d Cir. 1975)) (internal quotation marks omitted). Here, the evidence is ample that Mahender assisted his wife in bringing the maids to his home, that he did so to benefit from their labor, which he helped to direct, and that, knowing of his wife's threats and punishments, he aided her in meting them out. This evidence provides more than a sufficient basis on which to conclude that there was a "tacit understanding" between Mahender and Varsha that the maids would be held in involuntary servitude and peonage in the Sabhnanis' home.

2. Other Convictions

As already noted, Mahender does not directly challenge the sufficiency of the evidence to support his convictions for document servitude and conspiracy to commit document servitude. Instead, he argues that, because the evidence was insufficient to support his forced labor and peonage convictions, he necessarily cannot be guilty of the "derivative" offense of document servitude. Mahender's Br. 64. Mahender's argument is based on a fundamental misreading of the document servitude statute. Section 1592 of Title 18 provides that "[w]hoever knowingly

destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person" *either* "in the course of" a violation of one of a number of statutes, including the forced labor and peonage statutes, *or* "with the intent to violate" the same statutes, is guilty of a crime. 18 U.S.C. §§ 1592(a)(1)-(2). Mahender continually refers to this crime as an offense that is merely "derivative" of the forced labor and peonage crimes. This is incorrect: a defendant may be convicted under § 1592 for knowingly concealing immigration documents merely "with intent to violate" the forced labor or peonage statutes. 18 U.S.C. § 1592(a)(2).

In any event, we have already determined that Mahender's convictions for forced labor and peonage were supported by sufficient evidence. Here, the evidence that Samirah's and Enung's passports and other immigration documents were kept in a locked cupboard in the closet adjacent to the Sabhnanis' master bedroom was ample. The jury could infer Mahender's knowing possession of Samirah's and Enung's passports and other immigration documents from the fact that his own passport was kept in the same cupboard, and from the closet's position in the house. Therefore, Mahender's convictions for document servitude and conspiracy to commit document servitude are supported by sufficient evidence.

Finally, without challenging the sufficiency of the evidence to support his conviction, Mahender suggests that his conviction for harboring illegal aliens should be vacated because the harboring statute, 8 U.S.C. § 1324(a)(1)(A), was not "designed" to cover a situation in which a defendant forces an alien

who wishes to leave the country to remain here. Such conduct is "outside the scope" of the statute, which was only intended to criminalize conduct facilitating an alien's illegal presence in the United States. Mahender's Br. 64-65. Suffice it to say that the text of the statute cannot support such limitations. The statute renders guilty of a crime any person who, "knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation." 8 U.S.C. § 1324(a)(1)(A)(iii). The statute does not attempt to distinguish among various reasons why an alien has "come to, entered, or remains" in the country illegally, nor does it distinguish among various motives a defendant might have for "concealing, harboring, or shielding" the alien. "[Section] 1324, on its face, does not restrict the persons within its reach." *United States* v. *Kim*, 193 F.3d 567, 573 (2d Cir. 1999). We decline Mahender's invitation to read words into the statute that are not there.

[illegible] The Refusal of Prosecution Witnesses To Speak to Defense Counsel

On cross-examination by Mahender's counsel, several of the prosecution witnesses, including Deborah Litras, admitted that they had refused to speak to defense counsel prior to the trial. In the jury instructions, the district court told the jury that defense counsel had acted properly in attempting to interview witnesses, but that the witnesses were also within their rights to refuse to speak:

> Also, you have heard testimony from witnesses that attorney Stephen Scaring [Ma-

> hender's trial counsel] asked to speak to them prior to their testimony. I instruct you that Mr. Scaring had a right to attempt to interview these witnesses before they took the stand. However, I also instruct you that these witnesses had a right to decline to speak to him. And no unfavorable inference should be drawn against them because of that declination.

Tr. 5005. Judge Spatt overruled the defense's objection to this instruction at the charging conference.

Appellants argue that the district judge's instruction that the jury could draw no unfavorable inference against prosecution witnesses from the fact that they refused to be interviewed by the defense was erroneous because it prevented the jury from evaluating a fact that went to the issue of witness credibility. Absent the instruction, the Sabhnanis contend, the jury could have reasoned that because these witnesses refused to speak to defense counsel, they must have been biased against the Sabhnanis. Moreover, the Sabhnanis argue, the instruction may have cast Mahender's trial counsel in a negative light for even asking witnesses the question whether they had refused to speak to the defense prior to trial.

We review a claim of error in the content of jury instructions de novo. *United States* v. *Quattrone*, 441 F.3d 153, 177 (2d Cir. 2006). We have no difficulty concluding that there was no error in the instruction here. Mahender himself concedes that the instruction was correct insofar as it recognized that witnesses have a right to decline to be interviewed. *See, e.g., United States* v. *Agostino*, 132 F.3d 1183, 1191 (7th Cir. 1997); *United States* v. *Miller*, 381 F.2d 529,

538 n.7 (2d Cir. 1967) ("While the Government is doubtless bound not to obstruct a defendant's access to a prospective witness, we know of no rule requiring the witness to submit to an interview."); *United States* v. *James*, No. 02 CV 0778(SJ), 2007 U.S. Dist. LEXIS 25862, 2007 WL 914242, at *15 n.10 (E.D.N.Y. Mar. 21, 2007). The instruction did nothing more than inform the jury of this right and instruct that a witness does not act wrongfully by exercising it. The defense was still free to suggest – and did, through cross-examination and in summation – that the refusal to meet with defense counsel could suggest a witness's greater sympathy for or affiliation with the other side of the case.

Moreover, the jury was explicitly charged that it should evaluate the credibility of witnesses based on "the circumstances under which each witness testified" and "every matter in evidence that tends to show whether a witness is worthy of belief." Tr. 5011. Among these matters, the judge specifically instructed the jury that:

> How you choose to believe a witness may be influenced by *any* bias, resentment or anger that you may perceive the witness to have. Does the witness have a relationship with the government or a defendant that may affect how he or she testified? Does the witness have some incentive, loyalty or motive that might cause him or her to shade the truth? Or does the witness have some bias, prejudice or hostility that may have caused the witness consciously or not to give you something other than a complete, accurate account of the facts?

Tr. 5012 (emphasis added). This charge clearly allowed the jury to take into account any bias a witness might have, including any bias resulting from a relationship with the government. Finally, we reject as meritless any claim that the instructions could fairly be read to cast aspersions on Mahender's trial counsel, given the court's explicit statement that counsel had every right to attempt to interview the prosecution's witnesses.

IV. The Defense's Motion to Re-Open Following the Commencement of Jury Deliberations

The Sabhnanis next contend that the district court abused its discretion in failing to grant their motion to reopen the proceedings after the jury had begun its deliberations in order to present newly discovered evidence of the alleged bias of a prosecution witness. After closing arguments, during which some of her testimony had been attacked by the defense, prosecution witness Deborah Litras sent an e-mail to a family friend that read in relevant part as follows:

> I really do hope that the "theatrics" of the closing arguments by the defense will not sway the jury away from the right decision. The thing that scares me is that there never seems to be any justice in the world. I guess we'll just have to wait and see. I don't think it's going to be much longer. See 'ya. Deb.

Tr. 5150. The defense, upon discovering the e-mail, moved to reopen the case and to recall Litras for the purpose of questioning her about it. Defense counsel argued that the e-mail showed that Litras was biased in favor of conviction. The prosecution argued that the e-mail, fairly read, did not indicate a bias, but a desire for justice to be done, and also that it

was irrelevant to any issue the jury was considering in that it principally expressed Litras's opinion of the closing arguments.

The district court denied the defense motion to reopen. The judge noted that the e-mail did not expressly state that Litras was biased in favor of conviction and that, in any event, her trial testimony was explicit that she "believed the maids' complaints." Tr. 5188. "It was obvious from [Litras's] testimony . . . that she favored the maids [and] felt sorry for the maids, and she was behind the maids in this case." *Id.* Because her testimony indicated that Litras "favor[ed] the maids over her own boss," Tr. 5189, and because the jury also heard evidence that she had refused to speak to defense counsel while meeting with the government several times, Litras's leanings were already clear. The court also noted that reopening the case solely for testimony regarding the e-mail would create enormous practical difficulties and would be needlessly disruptive of the jury's deliberations. Finally, the court agreed with the prosecution that the e-mail was irrelevant to the question whether Litras was biased when she testified, and only reflected her "dismay . . . [at] the theatrics of the closing argument[s], which somewhat denigrated her." Tr. 5196.

We review a district court's determination whether to reopen a case after the jury has begun its deliberations for abuse of discretion. *See United States* v. *Crawford*, 533 F.3d 133, 138 (2d Cir. 2008); *United States* v. *Golomb*, 754 F.2d 86, 89 (2d Cir. 1985). In *Crawford*, we noted the factors that a district judge should consider in exercising this discretion:

> The court must consider the timeliness of the motion [to reopen], the character of the testimony, and the effect of granting the motion. The party moving to reopen should provide a reasonable explanation for failure to present the evidence in its case-in-chief. The evidence proffered should be relevant, admissible, technically adequate, and helpful to the jury in ascertaining the guilt or innocence of the accused. The belated receipt of such testimony should not imbue the evidence with distorted importance, prejudice the opposing party's case, or preclude an adversary from having an adequate opportunity to meet the additional evidence offered.

Crawford, 533 F.3d at 138 (quoting *United States* v. *Nunez*, 432 F.3d 573, 579 (4th Cir. 2005)) (emphasis omitted). Considering the *Crawford* factors, timeliness cannot be counted against the appellants here, as their counsel obtained Litras's e-mail only just before making the motion to reopen. Each of the other relevant factors, however, weighs against the Sahbnanis' position. We conclude based on these factors that the district court did not abuse its discretion.

At the start, the parties disagree about whether, in assessing the character of the evidence, we should construe it in the light most favorable to the defense. We need not resolve this question, however, because even viewing the e-mail and its potential effect in the Sabhnanis' favor, we conclude that the e-mail's significance did not merit reopening. We agree with the district court that to the extent the e-mail tended to show that Litras favored the maids, it was already obvious from her testimony that she believed the maids' stories of abuse and sympathized with them. Li-

tras testified that she "felt sorry" for the maids, Tr. 3937, that she provided the maids with food surreptitiously and hid the evidence from the Sabhnanis, that she was "upset" after Samirah displayed her injuries, Tr. 3874, 3901, and that she was "glad" when she learned that Samirah had fled the Sabhnanis' home. Tr. 3969. Mahender contends that the e-mail would have corrected a misimpression created by the government that Litras, who suffered from cancer, was reluctant to testify because doing so would place her job and her health insurance in jeopardy. Despite her personal concerns, however, Litras made it abundantly clear to the jury that her sympathies were with the maids and that, for this reason, she was not a reluctant witness. The e-mail would thus have added very little to what the jury had already heard.

The district court also properly considered the practical difficulties that would be caused by stopping the jury's deliberations and recalling Litras to testify. The potential for such a course of events to give "distorted importance" to evidence that is of marginal significance is obvious: here, there was a real risk that the jury would be distracted in its deliberations from the main issues. *See Crawford*, 533 F.3d at 140-41 (collecting cases noting a presumption that the significance of evidence introduced after the jury has begun deliberating will be misconstrued). We conclude that the district court's reasons for denying the motion – that the e-mail was of little or no evidentiary value in the determination of the Sabhnanis' guilt, that it would not meaningfully add to what the jury already knew or could infer about Litras's leanings, and that the disruption that would ensue would outweigh any potential usefulness of the evidence to the jury – were sound. The district court

did not err in denying the motion to reopen, much less abuse its discretion.

V. The Allegation of Juror Misconduct

About three weeks before the jury verdict, which was returned on December 17, 2007, a photographer for the *New York Daily News*, Stephen Barcelo, was sitting in his car in the parking lot of the federal courthouse in Central Islip, New York, where the trial was taking place, at about 5:00 p.m. His car was in the first row of parked cars, where Barcelo often parked in order to photograph the defendants and the lawyers in the case as they arrived and departed. On this occasion, Barcelo's car window was partially open. He observed a group of people leave the courthouse. Based on the time of day and the fact that he recognized some of them, he believed the group to be the Sabhnani jurors. Two women from the group – women he did not recognize – passed by his car door, speaking inaudibly. A minute or two later, he heard from behind his car a woman's voice loudly saying the words "guilty, guilty" in a laughing manner. Barcelo was then facing forward in his car in a dark parking lot, and he did not see who made the statement. Barcelo related this incident to fellow photographer Mary McLaughlin of the *New York Post* and to a reporter from the *Daily News*, Richard Weir. Kieran Crowley, a reporter for the *New York Post*, overheard Barcelo's statements to McLaughlin and related them to Mahender's defense counsel on or about December 19 – two days after the jury verdict.

The Sabhnanis, contending that the incident demonstrated that the Sabhnani jurors had engaged in impermissible deliberations before the close of evidence, moved for a new trial pursuant to Fed. R. Crim. P. 33 and also for a hearing at which jurors

would be required to testify. The district court held a hearing at which Barcelo appeared. Barcelo testified that because the parking lot was dark that night, he could not and did not recognize the two women as members of the Sabhnani jury, but merely assumed that they were. Moreover, Barcelo admitted that as of the day of his testimony, he probably couldn't identify any member of the jury because he did not regularly visit the courtroom during the trial, but mostly observed groups of people coming in and leaving the courthouse. Barcelo acknowledged that there were other people in the parking lot that evening, including spectators and jurors from other trials, and that, because he did not witness the conversation, he could not say for certain who made the statement "guilty, guilty" or even whether it was one of the two women he had initially seen. Barcelo stated he could not hear any of the woman's other words – and so apparently could not say whether she was discussing a case, a movie, or her own failure to go to the gym. He could not identify her voice, or provide any additional context for her statement.

Judge Spatt denied the defense motion for a new trial and also the motion for a hearing that would include juror testimony. *See United States* v. *Sabhnani*, 529 F. Supp. 2d 384 (E.D.N.Y. 2008) (district court opinion denying motion for new trial and evidentiary hearing on juror misconduct). The judge accurately noted that Barcelo's evidence fell far short of establishing that any misconduct had occurred. The judge expressed doubt at Barcelo's ability to identify and recognize members of the Sabhnani jury in light of his testimony that he did not visit the courtroom for any significant period of time. *Sabhnani*, 529 F. Supp. 2d at 389. The court noted that Barcelo could not testify to the context in which the "guilty, guilty"

statement was made, could not identify the person who made the statement, and had admitted during his testimony that he only assumed the speaker was a member of the Sabhnani jury. *Id.* at 389-90. Noting that the facts asserted were "vague and uncertain," the judge concluded that "the testimony and affidavits [were] insufficient to justify a further hearing with testimony from the jurors, and certainly not a new trial." *Id.* at 390. The judge further concluded that, even if the speaker had been shown to be a member of the Sabhnani jury and to have been referring to the case, "[o]ne juror's potentially out-of-context, single word comment, does not demonstrate that the jurors prematurely deliberated [and] does not demonstrate that the juror would be unreceptive to opposing arguments or that any juror failed to participate in deliberations in good faith." *Id.* at 393. The judge noted based on his own observations that the Sabhnani jury had "carefully and intently followed all of the testimony and the presentation of the evidence with close attention." *Id.* at 391.

"We review a trial judge's handling of alleged jury misconduct for abuse of discretion." *United States* v. *Gaskin*, 364 F.3d 438, 463 (2d Cir. 2004). A trial judge has "broad flexibility" in responding to allegations of such misconduct, particularly when the incidents relate to statements made by the jurors themselves, rather than to outside influences. *United States* v. *Thai*, 29 F.3d 785, 803 (2d Cir. 1994). We have stated, moreover, that district judges should be particularly cautious in conducting investigations into possible jury misconduct after a verdict, and that such investigations are only warranted when there is "clear, strong, substantial and incontrovertible evidence, that a specific, nonspeculative impropriety has occurred which could have prejudiced the trial of

a defendant." *United States* v. *Vitale*, 459 F.3d 190, 197 (2d Cir. 2006) (quoting *United States* v. *Sun Myung Moon*, 718 F.2d 1210, 1234 (2d Cir. 1983)) (internal quotation marks omitted).

The tenuousness of the Sabhnanis' argument is self-evident from Barcelo's testimony, and we find no abuse of discretion in the district court's decision not to pursue this matter further. This case presents no "clear, strong, substantial and incontrovertible evidence" of juror misconduct, and Given this conclusion, we need not address the district court's additional determination that, in any event, Federal Rule of Evidence 606(b) would prohibit jurors from testifying at the hearing the Sabhnanis sought. accordingly the district court properly determined that no further investigation was merited and that the motion for a new trial should be denied. *See Vitale*, 459 F.3d at 197.[15]

VI. Sentencing Issues

The defendants challenge various aspects of their sentences, as well as the calculation of the amount of restitution to the victims and the scope of the property forfeiture. With regard to the Sentencing Guidelines issues, we review a challenged sentence for its procedural and substantive reasonableness under an abuse of discretion standard. *United States* v. *Cavera*, 550 F.3d 180, 188 (2d Cir. 2008) (en banc). We review legal questions de novo, and we review the dis-

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[15] Given this conclusion, we need not address the district court's additional determination that, in any event, Federal Rule of Evidence 606(b) would prohibit jurors from testifying at the hearing the Sabhnanis sought.

trict court's factual determinations under a clear error standard. *United States* v. *Friedberg*, 558 F.3d 131, 133 (2d Cir. 2009). In assessing procedural reasonableness, we review, *inter alia*, whether the district court correctly calculated the applicable Guidelines range and whether it relied on any clearly erroneous factual findings. *Cavera*, 550 F.3d at 190; *see also Friedberg*, 558 F.3d at 133.

A. Double Counting

Varsha Sabhnani was sentenced to 132 months' imprisonment, which represented a sentence below her Guidelines range of 151 to 188 months. Varsha Sabhnani's Guidelines range was based upon her criminal history category of I, and two separate offense level calculations as to the two victims. For the offense level computation relevant to Samirah, the Guidelines imposed a base offense level of 22 pursuant to U.S.S.G. § 2H4.1. This base offense level was adjusted upwards two points for serious bodily injury, pursuant to § 2H4.1(b)(1)(B) and was also adjusted upwards four points for use of a dangerous weapon pursuant to § 2H4.1(b)(2)(A). Additional enhancements were imposed: three points for holding the victim for more than one year (§ 2H4.1(b)(3)(A)), and two points for knowingly committing an offense involving a vulnerable victim (§ 3A1.1(b)(1)), yielding an adjusted offense level of 33. The calculation as to Enung amounted to 27, which in turn added one point to the total for the offenses against Samirah to yield a final adjusted level of 34.

Varsha Sabhnani challenges her sentence on the ground that the district court should not have imposed enhancements both for causing serious bodily injury and for using a dangerous weapon. The district judge imposed a four-point adjustment for use of

a dangerous weapon based on the evidence that a number of such weapons were used in the commission of Varsha's crimes, including a knife, a rolling pin, and boiling water. Sentencing Tr. 10. Separately, the court determined that imposition of the "serious bodily injury" enhancement was proper because the jury had been charged and had found that Samirah and Enung had suffered serious bodily injury with respect to the harboring of aliens counts. According to Varsha Sabhnani, this amounted to impermissible double counting. For the following reasons, we disagree.

"Impermissible double counting occurs [under the Sentencing Guidelines] when one part of the guidelines is applied to increase a defendant's sentence to reflect the kind of harm that has already been fully accounted for by another part of the guidelines." *United States* v. *Volpe*, 224 F.3d 72, 76 (2d Cir. 2000) (quoting *United States* v. *Napoli*, 179 F.3d 1, 12 n.9 (2d Cir. 1999)) (internal quotation marks omitted). Multiple adjustments are properly imposed, however, "when they aim at different harms emanating from the same conduct." *Id.* As this Court noted in *United States* v. *Rappaport*, 999 F.2d 57 (2d Cir. 1993), enhancements are not duplicative when they reflect "different facets of the defendant's conduct," *Rappaport*, 999 F.2d at 60, or, as we put it in *Volpe*, when "[t]he . . . adjustments at issue . . . do not serve identical purposes, but rather address separate sentencing considerations," *Volpe*, 224 F.3d at 76.

Such is the case here. The conduct that would subject a defendant to the adjustment for use of a dangerous weapon does not necessarily subject that defendant to the enhancement for causing serious

bodily injury, nor are the kinds of harms at which these adjustments are aimed identical. Here, the district judge based Varsha's "use of a dangerous weapon" adjustment on the evidence that she had employed implements such as a knife and boiling water against Samirah. Because the use of such weapons did not require Varsha Sabhnani also to inflict serious bodily injury on her victims, the substantial evidence that she did inflict such injury mandated a separate adjustment – involving no double counting – to take account of this separate harm. *Cf. United States* v. *Donelson*, 450 F.3d 768, 774 (8th Cir. 2006) (noting that harms caused by committing an offense while endangering multiple victims and by using a firearm in connection with another felony offense are separate, and therefore imposition of adjustments based on each was not impermissible double counting).

United States v. *Hudson*, 972 F.2d 504 (2d Cir. 1992), on which Varsha principally relies, is not to the contrary. In *Hudson*, the defendant drove his car directly towards two U.S. Marshals in an attempt to escape from them. *Id.* at 505. The district court found that the defendant's use of a car was the use of a dangerous weapon, and thus applied the base offense level for "aggravated assault" under the Guidelines rather than the base offense level for obstructing or impeding officers. *Id.* The court then, in addition, imposed a four-point adjustment pursuant to a Guidelines provision that allowed for adjustments in aggravated assault cases in which "a dangerous weapon . . . was otherwise used." *Id.* at 505-06; *see also* U.S.S.G. § 2A2.2(b)(2)(B). We vacated Hudson's sentence because the use of the car was the only facet of the defendant's conduct that caused the district court to use the "aggravated assault" base offense

level, and that same conduct was also the basis for its "dangerous weapon" adjustment. *Hudson*, 972 F.2d at 507. As we later observed in *Rappaport*, "[b]oth of these increases necessarily reflected the same facet of Hudson's conduct." 999 F.2d at 61. By contrast here, the fact that Varsha Sabhnani used dangerous weapons in connection with her crimes was distinct from the fact that she also inflicted serious injury on her victims – neither aspect of her conduct necessarily implied the other. We conclude, therefore, that both were properly taken into account in setting her offense level.[16]

B. Vulnerable Victims Enhancement

Both defendants challenge the district court's enhancement of their sentences by two levels pursuant to the "vulnerable victim" enhancement of the Sentencing Guidelines, U.S.S.G. § 3A1.1(b)(1), which provides that "[i]f the defendant knew or should have known that a victim of the offense was a vulnerable victim, increase by 2 levels." U.S.S.G. § 3A1.1(b)(1). The application notes to the section prevent its application when the factors that made the victim unusually vulnerable are already incorporated into the guideline for the relevant offense. The Sabhnanis argue that Congress, in enacting the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, 114 Stat. 1464 (Oct. 28, 2000), considered the same factors that the judge relied on to conclude that Samirah and Enung were vulnera-

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[16] For substantially the same reasons we 16 conclude there was no double counting, we also reject Varsha Sabhnani's claim that she was entitled to a "cumulative effects" departure. Varsha's Br. 57.

ble victims in this case, and that U.S.S.G. § 2H4.1, the offense guideline for forced labor and for peonage, incorporates these factors. The district court therefore erred, they argue, in imposing the vulnerable victim enhancement. We disagree.

The district court made the following particularized findings with regard to whether Samirah and Enung were vulnerable victims:

> [T]hey were both native Indonesians; neither one spoke a word of English; had never been in the United States before; were totally dependent upon the defendants for their basic human needs of food, clothing and shelter; they never received any direct payment for services . . . and were therefore unable to support themselves.
>
> They actually couldn't even leave the house. They couldn't speak. They had no money. Additionally, they were threatened if they left, their family members would be harmed. They would be jailed. The defendants took their passports, visas and other documents, and kept them from the two women. They were in a situation where they had to accept these abusive conditions, of course because they had no alternative.

Sentencing Tr. 31-32. We review these factual findings only for clear error, *United States* v. *Patasnik*, 89 F.3d 63, 72 (2d Cir. 1996), which we do not find. It is also clear to us that these characteristics, particularly that the maids had never been to the United States, spoke no English, were entirely dependent on the Sabhnanis for basic necessities, and lacked any money and were not directly paid, made them "less

likely to thwart the crime[s]" than the average person, *United States* v. *Kaye*, 23 F.3d 50, 54 (2d Cir. 1994) and "in need of greater societal protection," *United States* v. *Dupre*, 462 F.3d 131, 146 (2006) (quoting *United States* v. *Stover*, 93 F.3d 1379, 1387 (8th Cir. 1996)). We have emphasized both of these factors in considering the vulnerable victim adjustment in the past.

The application notes to § 3A1.1(b)(1) state that the term "vulnerable victim" means "a person (A) who is a victim of the offense of conviction . . . and (B) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct." U.S.S.G. § 3A1.1(b)(1) cmt. app. n.2. The notes instruct that the enhancement should not be applied "if the factor that makes the person a vulnerable victim is incorporated in the offense guideline." *Id.* The notes cite as an example a hypothetical situation in which a particular offense guideline provides an explicit enhancement for a specified factor – in such a situation, if that same factor would also serve to make the victim "unusually vulnerable," the vulnerable victim enhancement should not be applied unless there are other, additional factors that render the enhancement appropriate.[17] Plainly, then, when an offense

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[17] The Application Note provides, in full:

> Do not apply subsection (b) if the factor that makes the person a vulnerable victim is incorporated in the offense guideline. For example, if the offense guideline provides an enhancement for the age of the victim, this subsection would not be applied unless the victim was unusually vulnerable for reasons unrelated to age.

guideline provides for an adjustment for a certain factor that also makes a victim "unusually vulnerable" – that is, that makes a victim less likely to be able "to protect himself from the crime," *Dupre*, 462 F.3d at 144 (internal quotation marks omitted), and in greater need of societal protection – a sentencing court should not apply the § 3A1.1(b)(1) enhancement due to that same factor. However, if the victims are characterized by additional factors not taken into account by an explicit reference in the applicable sentencing guideline, application of the § 3A1.1(b)(1) vulnerable victims enhancement is appropriate.

Here, the Sabhnanis do not (and could not) contend that the offense guideline that provided their base offense level, U.S.S.G. § 2H4.1, expressly incorporates any of the factors the district court relied on to conclude that Samirah and Enung were vulnerable victims. Instead, they claim that the guideline incorporates these factors *implicitly* because Congress, in enacting the versions of the criminal statutes under which the Sabhnanis were prosecuted, took into account the victim characteristics upon which the district court relied in applying the vulnerable victims enhancement. In this sense, the Sabhnanis contend that Samirah and Enung are not "unusually vulnerable," but rather the "prototypical victims Congress aimed to protect." Varsha's Br. at 64.

It is true that the VTVPA includes findings that persons with some of the same characteristics as Samirah and Enung are more likely to be victims of the crimes of forced labor, peonage, and document

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U.S.S.G. § 3A1.1(b)(1) cmt. app. n.2

servitude. "Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable." VTVPA § 102(b)(5), 114 Stat. 1466 (codified at 22 U.S.C. § 7101(b)(5)). Victims, because they will "frequently [be] unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked" and because they are "often subjected to coercion and intimidation including physical detention and debt bondage" and "often fear retribution and forcible removal to countries in which they will face retribution or other hardship," often find it "difficult or impossible" to report crimes committed against them. *Id.* § 102(b)(20), 114 Stat. 1468. In the VTVPA, Congress increased the statutory maximum sentence for several existing crimes including peonage, and enacted new separate offenses, including the forced labor and document servitude statutes at issue here. *Id.* §§ 112(a)(1)-(2), 114 Stat. 1486-89. Finally, Congress directed the Sentencing Commission to amend the Guidelines to "take all appropriate measures to ensure that [the Guidelines] and policy statements applicable to [trafficking offenses] are sufficiently stringent to deter and adequately reflect the heinous nature of such offenses." *Id.* § 112(b)(2)(A), 114 Stat. 1489-90 (codified at 22 U.S.C. § 7109(b)(2)(A)).

While it is true that Congress made findings in the VTVPA that the victims of "trafficking" offenses would frequently possess particular characteristics making them vulnerable, and that this factor contributes to the "heinous nature" of such offenses, however, neither the texts of U.S.S.G. §§ 2H4.1 and 3A1.1(b) nor the relevant application notes – which

are, after all, what we are construing – support the result the Sabhnanis urge. Indeed, as the Seventh Circuit has observed, the offense guideline pertinent to both forced labor and peonage, which the Sabhnanis identify as the "highest guideline driving [their] sentences," does not say anything about the vulnerability of the victim – and thus specifies no victim-related factor that, according to the application notes to § 3A1.1(b)(1), should therefore be excluded as the basis for a separate, vulnerable victim enhancement. *United States* v. *Calimlim*, 538 F.3d 706, 717 (7th Cir. 2008). Like the appellants in *Calimlim*, the Sabhnanis assert, in essence, that all victims of crimes like peonage and forced labor are vulnerable, and therefore that none are particularly so. We agree with the Seventh Circuit, however, that this is not the case: "[W]ith enough muscle, it would be possible to coerce a perfectly able-bodied, English-speaking, independent American citizen into forced labor." *Id.* Moreover, the Sabhnanis seek to engage courts applying the vulnerable victims enhancement in a morass of guesswork regarding the extent to which particular characteristics of the victim have been considered by Congress and tacitly incorporated into criminal statutes and associated guidelines that facially make no mention of them. We decline this invitation and conclude that the vulnerable victim enhancement was properly applied in this case.

C. Calculation of the Amount of Restitution

In 18 U.S.C. § 1593, Congress provided for mandatory restitution to victims in cases of, among other things, peonage, forced labor, and document servitude. 18 U.S.C. § 1593(a). Specifically, the "order of restitution . . . shall direct the defendant to pay the victim . . . the full amount of the victim's losses." *Id.*

§ 1593(b)(1). The statute defines the "full amount of the victim's losses," in pertinent part, as "the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et seq.)" 18 U.S.C. § 1593(b)(3). Here, the district court consulted the Fair Labor Standards Act's (FLSA) minimum wage and overtime provisions, 29 U.S.C. §§ 206 and 207, and determined minimum wage rates for the period of Samirah's and Enung's labor, which it multiplied by a statutorily determined factor to calculate overtime pay. The court performed its calculations on the basis that the maids worked 24 hours per day when the Sabhnanis were at home, and eight hours per day when the Sabhnanis left the country during the summer months. The court subtracted the money that had actually been paid to the victims' families in Indonesia. Finally, it doubled the total award pursuant to 29 U.S.C. § 216, which allows for double damages for employers who violate the FLSA's minimum wage and overtime provisions. Based on these calculations, the district court awarded $620,743.82 to Samirah and $315,802.40 to Enung.

The Sabhnanis raise three separate challenges to these awards on appeal. First, they argue that the district court erred in finding that Samirah and Enung were entitled to overtime pay because the court failed properly to apply a statutory exemption to FLSA for payment of overtime to domestic servants who reside in their employer's household. Second, they argue that the district court should have conducted an evidentiary hearing to determine the exact number of hours the victims worked, and that the court clearly erred in calculating the award based on a determination that the victims worked 24-hour days. Finally, they argue that the district

court erred in awarding liquidated damages pursuant to 29 U.S.C. § 216(b). We agree that the district court erred in awarding overtime pay, and thus we vacate the restitution award and remand for recalculation. We conclude, however, that the district court was within its discretion not to hold an evidentiary hearing and that it did not err in awarding liquidated damages.

1. The Applicability of the FLSA Overtime Provisions

Pursuant to 29 U.S.C. § 207, and with regard to covered employees, "no employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half time the regular rate at which he is employed." 29 U.S.C. § 207(a)(1). Congress extended this maximum hours provision to domestic workers in 1974. *Coke* v. *Long Island Care at Home, Ltd.*, 376 F.3d 118, 123 (2d Cir. 2004), *vacated on other grounds*, 546 U.S. 1147, 126 S. Ct. 1189, 163 L. Ed. 2d 1125 (Mem.) (2006). However, 29 U.S.C. § 213(b)(21) provides that Section 207 "shall not apply with respect to . . . any employee who is employed in domestic service in a household and who resides in such household." 29 U.S.C. § 213(b)(21). The Sabhnanis argue that this exemption to Section 207 applies to Samirah and Enung and thus that the district court's restitution award, which was calculated using the overtime provision, was erroneous. The government argues that the exemption does not apply on the theory that Samirah and Enung did not reside with the Sabhnanis because the Sabhnanis "failed to provide, among other things, appropriate living quarters, adequate sleep-

ing facilities and adequate meals." Gov't's Br. 127. It is undisputed that Samirah and Enung were "employed in domestic service in a household" under 29 U.S.C. § 213(b)(21); the only question is whether they were employees who "resided" in the Sabhnanis' home.

"Well-established principles of construction dictate that statutory analysis necessarily begins with the 'plain meaning' of a law's text and, absent ambiguity, will generally end there." *United States* v. *Venturella*, 391 F.3d 120, 125 (2d Cir. 2004) (quoting *Collazos* v. *United States*, 368 F.3d 190, 196 (2d Cir. 2004)) (internal quotation marks omitted). We interpret the unambiguous terms of statutes according to their ordinary and plain meaning. *Lee* v. *Bankers Trust Co.*, 166 F.3d 540, 544 (2d Cir. 1999) ("It is axiomatic that the plain meaning of a statute controls its interpretation, and that judicial review must end at the statute's unambiguous terms." (citation omitted)).

To "reside" generally means "[t]o dwell permanently or for a considerable time; to have one's settled or usual abode; to live, in or at a particular place." *Oxford English Dictionary* (2d Ed. 1989). In *Venturella*, we noted that the term "resides" in its normal use "denotes residence." *Venturella*, 391 F.3d at 125 (citing *Webster's Third New Int'l Dictionary* 1931 (2000); *United States* v. *Namey*, 364 F.3d 843, 845 (6th Cir. 2004)). Other courts have also determined that whether one "resides" in a place, in the natural and ordinary sense of the phrase, refers to whether one lives there and makes one's permanent or semi-permanent home in that place. *See, e.g.*, *Weems* v. *Little Rock Police Dep't*, 453 F.3d 1010, 1016 (8th Cir. 2006); *Gusewelle* v. *City of Wood River*,

374 F.3d 569, 577 (7th Cir. 2004) (city rules requiring employees to "reside" within city limits meant employees must maintain their "primary residence" there); *see also Rosenruist-Gestao E Servicos LDA* v. *Virgin Enters. Ltd.*, 511 F.3d 437, 450 (4th Cir. 2007) (Wilkinson, J., dissenting) (noting that dictionary meaning of a witness "residing" in a judicial district for purposes of 35 U.S.C. § 24 is that the witness "dwell[s] permanently or for a considerable time" there). This meaning is even used when such "residence" is involuntary, as in the case of one residing in a prison. *See, e.g., Hewitt* v. *Helms*, 459 U.S. 460, 466, 103 S. Ct. 864, 74 L. Ed. 2d 675 (1983) (describing claim of protected liberty interest in "continuing to reside in the general prison population"), *abrogated on other grounds by Sandin* v. *Conner*, 515 U.S. 472, 483, 115 S. Ct. 2293, 132 L. Ed. 2d 418 & n.5 (1995).

Because there is no doubt that Samirah and Enung lived in the Sabhnanis' house and did so as permanent residents for a considerable time, we conclude that the maids were "employee[s] who [were] employed in domestic service in a household and who reside[d] in such household" for the purpose of the § 213(b)(21) exemption. *See, e.g., Manliguez* v. *Joseph*, 226 F. Supp. 2d 377, 381, 388 (E.D.N.Y. 2002) (finding that live-in domestic servant was covered by § 213(b)(21) exemption); *see also Almeida* v. *Aguinaga*, 456 F. Supp. 2d 505, 506, 508 (S.D.N.Y. 2006) (plaintiff live-in domestic servant conceded, and court agreed, that § 213(b)(21) exemption applied). The sources relied on by the government to argue against this construction of Section 207 are both unpersuasive and inapplicable.

The government points to an Opinion Letter of the Department of Labor that interpreted, in the context of a different regulation, what it means for an employee to "reside[] on his employer's premises . . . for extended periods of time." Opinion Letter Fair Labor Standards Act (FLSA), 1981 WL 179033 (Dep't of Labor, Feb. 3, 1981) (hereinafter "FLSA Opinion Letter") (quoting 29 C.F.R. § 785.23). The letter determined that the employees in question, who were employed as "houseparents" in a privately-owned community for the developmentally disabled and who stayed overnight at the facilities for five or six days in a row, were "residing" at their employer's premises notwithstanding the fact that the employees maintained their own private residences. *Id.* "Where the facilities offered by the employer provide a home-like environment with private quarters separate from the residents of the group home," according to the FLSA Opinion Letter, the employees should be regarded as residing there (meaning that they need not be paid for hours spent on their own in the private quarters) on the theory that "[i]n light of the amount of time they spend at the group home, it is in effect a second residence." *Id.*

The government claims that under this interpretation, the maids were not "residing" in the Sabhnanis' house because they were not provided with "a home-like environment with private quarters." Nothing about the FLSA Opinion Letter, however, suggests that it was an interpretation of what it means to "reside in [a] household" for purposes of § 213(b)(21). Indeed, it is clear in context that the letter is attempting to answer an entirely different question from the one posed by this case: whether an employee with his or her *own* private residence can *also* "reside" at the employer's premises. The letter's

answer to this question tells us very little about whether, on the facts of this case, Samirah and Enung, who had nowhere else to go, were employees who "resided" in the Sabhnani household. Nor does it purport to suggest, at least with regard to domestic service, that it is *only* when an employee has private quarters separate and apart from the area where he or she works that this employee should be regarded as residing at the employer's premises – a circumstance that, in any event, provides a somewhat arbitrary basis for distinguishing among domestic workers who live in their employers' homes and who argue that they are entitled to overtime pay. The FLSA Opinion Letter thus gives us no cause to doubt our interpretation of § 213(b)(21). For the same reasons, we find the cases relied on by the government that apply the Opinion Letter (again to facts not similar to those in this case) inapposite. *See, e.g., Chao* v. *Jasmine Hall Care Homes, Inc.*, No. 2:05-cv-1306, 2007 U.S. Dist. LEXIS 96445, 2007 WL 4591438, *2-3 (E.D. Cal. Dec. 28, 2007).

We therefore vacate the restitution award and remand for recalculation. We note, however, that although § 213(b)(21) prevents the calculation of restitution from being based on an entitlement to overtime, "this exemption does not excuse the employer from paying the live-in worker at the applicable minimum wage rate for all hours worked." 29 C.F.R. § 552.102(a). We find for the reasons set forth below that the district court did not abuse its discretion in awarding 24 hours per day's worth of pay for the days on which the Sabhnanis were present in the house, and that the awarding of double damages was proper. Accordingly, the new award need not deviate from those aspects of the original.

2. The District Court's Decision Not To Hold an Evidentiary Hearing

Contending that factual issues regarding the appropriate amount of restitution were in dispute, the Sabhnanis sought to examine Samirah and Enung at an evidentiary hearing before the district court to determine, among other things, the number of hours that they worked. The district court denied this request, noting that in their extensive trial testimony, Samirah and Enung had "covered substantially all the subjects raised by the Defendants" in their objections to the proposed restitution. *United States* v. *Sabhnani*, 566 F. Supp. 2d 139, 146 (E.D.N.Y. 2008) (District Court restitution opinion). On appeal, the Sabhnanis argue that the district court's failure to hold an evidentiary hearing permitted the government to obtain a restitution award without proving the correct amount of loss and deprived the defendants of their ability to challenge the government's calculations. We disagree.

We have noted, in the context of contested issues regarding the propriety of a restitution award, that the sentencing procedures employed to resolve such disputes are within the district court's discretion so long as the defendant is given an adequate opportunity to present his position: "[T]he district court is not required, by either the Due Process Clause or the federal Sentencing Guidelines, to hold a full-blown evidentiary hearing in resolving sentencing disputes. . . . All that is required is that the court afford the defendant some opportunity to rebut the Government's allegations." *United States* v. *Maurer*, 226 F.3d 150, 151-52 (2d Cir. 2000) (per curiam) (quoting *United States* v. *Slevin*, 106 F.3d 1086, 1091 (2d Cir. 1996)) (internal quotation marks omitted). In *Maur-*

er, we concluded that the district court did not abuse its discretion in failing to hold an evidentiary hearing, observing that "the trial record shed substantial light" on the issues in dispute, and that the district court provided the defendant with multiple opportunities to make arguments regarding the award. *Id.* at 152.

Here, the trial testimony made very clear that so long as the Sabhnanis were present, none of the maids' time was truly their own. Both Samirah and Enung offered unrefuted testimony that they performed household work between 4:00 a.m. and late at night seven days a week. The evidence also established that Varsha sometimes gave out tasks that required the whole night to accomplish. Samirah testified that she was deprived of sleep, sometimes sleeping only two hours in a 24-hour period. Samirah testified that she never left the house alone, and Enung testified that she "didn't dare" leave the house due to Varsha's threats. Tr. 3188. Neither testified that any of their time, apart from the periods during which the Sabhnanis left the country for the summer, was free from responsibility.

The Sabhnanis, contrary to their position here, were not denied an opportunity to challenge the government's proposed calculation of the restitution award. In addition to considering sentencing memoranda, the district court held a hearing on July 11, 2008 at which the issue of restitution was addressed. At this hearing, the defendants were not permitted to examine the maids, but they did cross examine the government's witness from the Department of Labor who performed the calculations on which the government based its proposed award. The Sabhnanis thus had ample occasion to challenge this witness's

knowledge of the facts of the case and the basis for his figures.

We conclude that the defendants were "afforded an adequate opportunity to argue [their] position" and that the district court did not abuse its discretion in declining to hold a full evidentiary hearing. *Maurer*, 226 F.3d at 152. "In determining the number of hours worked by a live-in worker, the employee and the employer may exclude, by agreement between themselves, the amount of sleeping time, meal time and other periods of complete freedom from all duties." 29 C.F.R. § 552.102(a). Here, the trial record established that there was no "agreement" between the Sabhnanis and the maids as to periods of free time. To the contrary, the testimony was that at no time were Samirah and Enung afforded "periods of complete freedom from all duties when the employee may either leave the premises or stay on the premises for purely personal pursuits." *Id.* The trial testimony further demonstrated that the maids did not habitually get "a reasonable night's sleep"; in such cases, Department of Labor regulations suggest that "the entire [sleeping] period" should be counted towards the number of hours worked. 29 C.F.R. § 785.22. The district court did not err, much less abuse its discretion, in concluding that the trial record shed substantial light on the number of hours worked and that a full hearing was unnecessary.

3. The District Court's Award of Liquidated Damages

Pursuant to 29 U.S.C. § 216(b), the district court calculated a "net back pay" figure for each of the maids and then doubled this figure to arrive at each maid's total award. Section 216(b) of the FLSA pro-

vides that "[a]ny employer who violates [§§ 206 and 207] . . . shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages." 29 U.S.C. § 216(b). The Sabhnanis argue that the § 216(b) liquidated damages provision does not apply to restitution awards under 18 U.S.C. § 1593. We disagree.

Section 1593 provides that a sentencing court shall order restitution in the "full amount of the victim's losses," which the statute defines to include "the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et seq.)." 18 U.S.C. § 1593(b)(3). The question here is whether § 216(b)'s provision for liquidated damages Indeed, the value of the victim's labor "as guaranteed 18 under [FLSA's] minimum wage and overtime guarantees," 18 U.S.C. § 1593(b)(3), requires reference to § 216(b) itself, because it is this provision that by its terms guarantees to the employee not only liquidated damages, but the minimum wages and overtime compensation that an employer has failed to pay. 29 U.S.C. § 216(b) (noting that any employer who violates §§ 206 and 207 "shall be liable to the employee" for unpaid minimum wages, unpaid overtime compensation, and liquidated damages). counts as part of the "value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act." *Id.* We think it does.

Three points are significant about the statutory language. First, § 1593's reference to FLSA does not

limit the "minimum wage and overtime guarantees" that determine the "value" of the victim's labor solely to §§ 206 and 207, the specific provisions of FLSA setting out the definitions of minimum wage and overtime and when they apply. This suggests that statutory provisions other than §§ 206 and 207 are relevant in determining what FLSA's "minimum wage and overtime guarantees" are.[18] Second, § 216(b)'s double damages provision is triggered automatically by a violation of §§ 206 or 207, so that an employer who violates these provisions "*shall be liable* to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation . . . and in an additional equal amount as liquidated damages." 29 U.S.C. § 216(b) (emphasis added). Third, § 216(b) is explicitly and exclusively tied to violations of the minimum wage and overtime rules in §§ 206 and 207.

These points strongly suggest to us that the "value of the victim's labor as guaranteed under the minimum wage and overtime guarantees [of FLSA]," for the purposes of 18 U.S.C. § 1593, includes the liquidated damages mandated by § 216. The Sabhna-

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[18] Indeed, the value of the victim's labor "as guaranteed 18 under [FLSA's] minimum wage and overtime guarantees," 18 U.S.C. § 1593(b)(3), requires reference to § 216(b) itself, because it is this provision that by its terms guarantees to the employee not only liquidated damages, but the minimum wages and overtime compensation that an employer has failed to pay. 29 U.S.C. § 216(b) (noting that any employer who violates §§ 206 and 207 "shall be liable to the employee" for unpaid minimum wages, unpaid overtime compensation, and liquidated damages).

nis have one principal argument to the contrary. Section 260 of FLSA provides that when an employer shows that the conduct giving rise to a FLSA violation was undertaken in good faith and that he had reasonable grounds for believing that his conduct was not unlawful, "the court may, in its sound discretion" lessen or dispense with the liquidated damages award. 29 U.S.C. § 260. Based on this provision, the Sabhnanis contend that a liquidated damages award is not part of the value of the victim's labor that FLSA guarantees, but is in the nature of a penalty imposed on some employers for willful noncompliance.

This argument is without merit. As we have said with regard to FLSA's liquidated damages provision in the past, "[l]iquidated damages are not a penalty exacted by the law, but rather compensation to the employee occasioned by the delay in receiving wages due caused by the employer's violation of the FLSA." *Herman* v. *RSR Sec. Servs. Ltd.*, 172 F.3d 132, 142 (2d Cir. 1999); *see also Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 707, 65 S. Ct. 895, 89 L. Ed. 1296 (1945) (noting that FLSA's liquidated damage provision "is not penal in nature but constitutes compensation for the retention of a workman's pay which might result in damages too obscure and difficult of proof for estimate"); *Overnight Motor Transp. Co.* v. *Missel*, 316 U.S. 572, 583-84, 62 S. Ct. 1216, 86 L. Ed. 1682 (1942) (same). The possibility that a judge may in narrow circumstances relieve an employer of its obligation to pay alters neither Section 216's general command that liquidated damages be paid nor our repeated recognition that these damages count as compensation. *See Reich* v. *S. New England Telecoms. Corp.*, 121 F.3d 58, 71 (2d Cir. 1997) (noting that FLSA's liquidated damages "are consi-

dered compensatory rather than punitive"); *see also Herman*, 172 F.3d at 142 ("double damages [are] the norm and single damages the exception").

Finally, the defendants argue, citing *Brock* v. *Superior Care, Inc.*, 840 F.2d 1054 (2d Cir. 1988), that they are entitled to a jury trial before liquidated damages may be awarded. In *Brock* , this Court determined that in suits by the Secretary of Labor or an employee for back wages and liquidated damages under 29 U.S.C. §§ 216(b) and (c), an employer is entitled to a jury trial on the issue of the amount of back pay due pursuant to the Seventh Amendment. *Brock*, 840 F.2d at 1063 (citing *Lorillard* v. *Pons*, 434 U.S. 575, 580, 98 S. Ct. 866, 55 L. Ed. 2d 40 & n.7 (1978)). Suffice it to say that the issue of whether an employer has a Seventh Amendment right to a jury in a civil case in which an employee or the government is seeking back pay and liquidated damages is analytically distinct from the question whether a criminal defendant who is required by statute to pay restitution is entitled to a jury trial under the Sixth Amendment on the amount of restitution due. This court has already held that the answer to the latter question is "no" in the context of awards made pursuant to other restitution statutes. *See United States* v. *Yin Yat Chin*, 476 F.3d 144, 147 (2d Cir. 2007); *United States* v. *Reifler*, 446 F.3d 65, 118-19 (2d Cir. 2006). We see no reason why these decisions should not apply here. For these reasons, the award of liquidated damages was proper. On remand, in calculating the new restitution award, the district court may award liquidated damages pursuant to FLSA § 216.

D. Property Forfeiture

After the jury returned its verdict as to the criminal charges, the government sought forfeiture of the

Sabhnani's home pursuant to 18 U.S.C. §§ 1594 and 982(a)(6)(A). Section 1594 provides, in relevant part:

> (d) The court, in imposing sentence on any person convicted of [an involuntary servitude offense] shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—
>
> > (1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation
>
> . . . .
>
> (e)(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them:
>
> > (A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

Section 982(a)(6)(A) further provides:

> The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate [inter alia, the harboring offense] . . . if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States, regardless of any provision of State law—
>
> . . .
>
> (ii) any property real or personal—
>
> > . . . (II) that is used to facilitate, or is intended to be used to facilitate, the com-

> mission of the offense of which the person is convicted.

Pursuant to Fed. R. Crim. P. 32.2(b)(1), the district court determined that the entire house, including Mahender's attached office, was subject to forfeiture. After being charged, the jury deliberated and found as to both defendants that the government had proven by a preponderance of the evidence that the house was used "to facilitate the commission" of each of the crimes of which the Sabhnanis had been convicted.

Mahender raises two challenges to the forfeiture. First, he argues that the government did not prove that his office, which is annexed to the house, was used to facilitate the commission of the crimes and thus was subject to forfeiture. Second, he argues that the forfeiture of his interest in the home was grossly disproportionate to his culpability in the underlying crimes, and thus violated the Excessive Fines Clause of the Eighth Amendment. We review de novo a district court's legal conclusions regarding forfeiture. *United States* v. *Capoccia*, 503 F.3d 103, 109 (2d Cir. 2007). We review its factual conclusions for clear error. *United States* v. *Gaskin*, 364 F.3d 438, 462 (2d Cir. 2004).

1. Mahender Sabhnani's Statutory Challenge to the Forfeiture of the Office

Mahender makes two points with regard to the forfeiture of his office. First, he argues that the jury was improperly instructed that the forfeiture statutes allow for forfeiture of property even if only part of the property was used to commit or facilitate the crimes. Second, he argues that his office was outside the scope of the applicable forfeiture statutes because it was not part of "the actual property" used to

commit or to facilitate the Sabhnanis' offenses. Mahender's Br. 83.

We, like the district court, reject the premise of Mahender's argument – specifically that the office is a separate piece of property from the house itself and that the district court therefore should have determined separately whether it was subject to forfeiture. The office is not detached or separate from the house, and it is not separately owned; nor does it have a separate address. *United States* v. *Sabhnani*, 566 F. Supp. 2d 148, 156-57 (E.D.N.Y. 2008) (district court's forfeiture opinion). There is no separation of the office from the main house, as it is accessible directly from a kitchen within the house. The only evidence in the record that would arguably support the contention that the office is "separate" property is Deborah Litras's statement that the office is accessible via a separate entrance from the outside of the residence. Litras went on to testify, however, however, that the office can be accessed from the house by a single door. The district court did not err, therefore, in submitting to the jury the question whether the house as a whole was subject to forfeiture.

Even if we accepted Mahender's invitation to subdivide the parts of the Sabhnanis' house and determine whether each of them was separately subject to forfeiture, moreover, we have no difficulty concluding that the office was "used or intended to be used to commit or to facilitate the commission of" the crimes. 18 U.S.C. § 1594(d)(1). Under Fed. R. Crim. P. 32.2, the court may determine whether a property is subject to forfeiture "based on evidence already in the record," Fed. R. Crim. P. 32.2(b)(1)(B), including testimony at the earlier trial. The testimony at trial establishing that Samirah and Enung cleaned the

bathroom of the office on Mahender's instructions, washed the office floor, and served Mahender drinks in the office, demonstrates that some of the labor the maids were forced to do took place in the office. Moreover, because the maids were "concealed" within the residence and they entered the office on occasion, the office was also used to "conceal" them in violation of the harboring statute. Consequently Mahender's office was used to commit the crimes at issue, and it was properly included in the forfeiture.

2. Mahender Sabhnani's Constitutional Challenge to the Forfeiture

Mahender next argues that forfeiture of his entire interest in his home is in gross disproportion to his role in the crimes, in violation of the Eighth Amendment's prohibition of excessive fines. U.S. Const. amend. VIII. In evaluating such a claim, we determine whether the forfeiture is "grossly disproportional to the gravity of a defendant's offense." *United States* v. *Bajakajian*, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998).[19] We do so by considering "(1) the harshness . . . of the forfeiture in comparison to the gravity of the offense, giving due regard to (a) the offense committed and its relation

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[19] Although not all forfeitures are "fines" for the purpose of the Excessive Fines clause, those that can be characterized as punitive are "fines" subject to the limitations of the Eighth Amendment. *See Austin* v. *United States*, 509 U.S. 602, 609-10, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993) (noting that Excessive Fines Clause limits the government's ability to extract payments as punishment for an offense, whether those payments are sought in civil or criminal proceedings); *see generally von Hofe* v. *United States*, 492 F.3d 175, 181-82 (2d Cir. 2007).

to other criminal activity, (b) whether the claimant falls within the class of persons for whom the statute was designed, (c) the punishments available, and (d) the harm caused by the claimant's conduct; (2) the nexus between the property and the criminal offenses, including the deliberate nature of the use and the temporal and spatial extent of the use; and (3) the culpability of each claimant." *von Hofe* v. *United States*, 492 F.3d 175, 186 (2d Cir. 2007) (citing *Bajakajian*, 524 U.S. at 337-40). The district court, in rejecting Mahender's constitutional challenge, found that the "essence" of the defendants' crimes was the "harboring [of] illegal aliens and forcing them to perform domestic labor." *Sabhnani*, 566 F. Supp. 2d at 155. The court determined that the Sabhnanis were clearly within the class of persons for whom the statutes at issue were designed, and that the statutes carried with them the possibility of severe punishment and large fines. *Id.* The trial testimony demonstrated, moreover, that the crimes of the defendants, all of which took place within the Sabhnani residence, caused great harm to the victims. *Id.*

Relying on *von Hofe*, Mahender argues on appeal that because he was less culpable for the crimes than was Varsha, the forfeiture of his interest in their jointly-owned home was excessive. In *von Hofe*, a husband and wife were convicted of state law offenses related to the growing of 65 marijuana plants in their shared residence, and the federal government thereafter sought forfeiture of the home. *von Hofe*, 492 F.3d at 179. The only crime to which Mrs. von Hofe pled guilty was possession of a controlled substance under Connecticut state law, while her husband pled guilty to manufacturing and distributing such substances. *Id.* We agreed with the district court that forfeiture of the husband's interest in the

home did not violate his rights under the Excessive Fines Clause, *id.* at 186, but we reversed the forfeiture judgment as to his wife, *id.* at 188. Stating that Mrs. von Hofe bore "minimal blame for the criminal activity" that occurred at the house, we noted that there was no evidence in the record of her use of drugs or involvement in any way in the growing of the marijuana. *Id.* Indeed, there was no evidence that she even knew that marijuana was being trafficked out of her home. *Id.* at 188-89

We find von *Hofe easily* distinguishable. As we have already discussed, the trial testimony is clear that Mahender both knew of the criminal conduct taking place inside his residence and participated in it. This distinguishes *von Hofe*, in which we found it significant to her level of culpability that Mrs. von Hofe neither knew of the drug trafficking nor in any way "encouraged or promoted" it. *Id.* at 188. In *United States* v. *Collado*, 348 F.3d 323 (2d Cir. 2003), we rejected a constitutional challenge to a forfeiture action against a building owner who was "willfully blind" to the drug trafficking taking place in her building. *Collado*, 348 F.3d at 327-28. Suffice it to say that if willful blindness is a sufficient level of culpability to justify a property forfeiture, Mahender's willful participation in the crimes taking place in his home fully supports the forfeiture judgment here. *See also United States* v. *Milbrand*, 58 F.3d 841, 848 (2d Cir. 1995) (forfeiture of mother's interest in farm on which son conducted marijuana trafficking was not excessive because evidence demonstrated that she must have known of criminal conduct taking place there). Given the evidence on which the jury relied to convict Mahender of the underlying criminal charges, there was nothing "grossly disproportionate" about the forfeiture of his interest in the house,

and thus the forfeiture did not violate the Excessive Fines Clause.

CONCLUSION

For the foregoing reasons, we vacate the restitution award and remand for recalculation. We affirm the district court's judgments in all other respects. In light of the fact that we affirm on all issues related to the guilt and sentence of Mahender Sabhnani, he is ordered to surrender on April 5, 2010 to begin serving his term of incarceration. Mahender Sabhnani's current conditions of release on bail pending appeal will remain in effect until such time as he surrenders.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

United States of America,

Plaintiff,

v.

Varsha Mahender Sabhnani and Mahender Murlidhar Sabhnani,

Defendants.

07-CR-429 (TCP)

Sept. 21, 2007.

Demetri M. Jones, Mark Joseph Lesko, United States Attorneys Office, Central Islip, NY, for Plaintiff.

MEMORANDUM AND ORDER

PLATT, District Judge.

Before the Court is defendants' motion seeking an Order granting their requests: (1) for a change of venue pursuant to Federal Rule of Criminal Procedure 21(a); (2) for reassignment of the instant case

pursuant to Local Rule 50.3(c);[1] and (3) for leave to make additional pre-trial motions.

For the following reasons, defendants' motion is **DENIED**.

On May 14, 2007, defendants were arrested pursuant to a Complaint charging them with violations of 18 U.S.C. §§ 1589 and 2 (forced labor) after complaining witness, "Jane Doe 1," informed the police that she and another woman were being held captive by defendants at their home. On May 15, 2007, defendants were arraigned before Magistrate Judge A. Kathleen Tomlinson, who issued a Temporary Order of Detention for defendants and set the matter down for a bail hearing. May 15, 2007 Trans. at 30. On May 17, 2007 and after holding the bail hearing, Magistrate Judge Tomlinson determined that defendants were to be released subject to specific conditions. May 17, 2007 Bail Trans. at 45-63.

Thereafter, on May 22, 2007 an Indictment was re-turned charging the defendants with two counts of forced labor in violation of 18 U.S.C. §§ 1589, 1594(a), and 3551, and two counts of harboring in violation of 8 U.S.C. §§ 1324(a)(1)(A)(iii), 1324(a)(1)(A)(v)(II), 1324(a)(1)(B)(iii), and 18 U.S.C.

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[1] This Court denied defendants' motion to have their case reassigned to the Hon. Arthur D. Spatt on the record on July 13, 2007 wherein the Court also noted that this was the *second* application made by defendants to have the case reassigned to Judge Spatt pursuant to Local Rule 50.3(c). *See* Trans. July 13, 2007 at 2-3. Defendants' first application was also denied on the record. *See* Trans. May 24, 2007 at 6-7.

§ 3551.[2] On May 24, 2007, defendants were arraigned on the Indictment and, upon the government's application, this Court ruled that it would hear argument on the issue of whether the bail hearing should be reopened in light of new information which surfaced subsequent to Judge Tomlinson's ruling releasing defendants on bail.

On May 30, 2007, and after oral argument on the government's motion to have the bail hearing reopened,[3] this Court directed defendants' attorneys to meet with the government to work out a set of conditions to ensure defendants appearance at trial in this matter. Thereafter, two separate draft Stipulations were submitted by defendants to this Court, neither having been pre-submitted for approval to the government. The Court declined to approve or even consider either draft due to defendants' failure to comply with this Court's direction that the stipulated terms be agreed upon by both parties prior to submission to the Court. *See* Order dated June 5, 2007. On June 6,

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[2] On September 18, 2007, a Superseding Indictment was returned charging defendants with additional violations of 8 U.S.C. §1324 (a)(1)(A)(v)(I), 18 U.S.C. §§ 371,982(a)(6)(A), 982(b)(1), 1581(a), 1592, 1594, 1594(a), 21 U.S.C. § 853(p), 28 U.S.C. § 2461(c) on which defendants were arraigned and entered not guilty pleas on September 19, 2007.

[3] The government contended that the defendants had not been forthcoming with regard to their wealth and assets and, as such, presented a risk of flight. In support of their application, the government presented evidence of significant financial transactions between the defendants and relatives overseas as well as evidence of additional accounts and assets over which defendants had control and failed to disclose to Pretrial Services.

2007, the government rejected defendants' draft proposal and, by letter motion, stated that no conditions or set of conditions existed which would mitigate defendants' risk of flight. *See* Govt. Ltr. dated June 6, 2007.

On or about June 6, 2007, defendants fired all but one of their first set of lawyers. On June 8, 2007, defendants fired their second set of lawyers.

On June 11, 2007, this Court ordered the defendants held without bail pending trial based on the defendants' and the government's failed attempts to reach an agreement as well as the Court's finding that the defendants had not been forthcoming with regard to their finances. On or about June 14, 2007, defendants appealed the Order denying them bail to the United States Court of Appeals for the Second Circuit. On July 6, 2007, the Second Circuit vacated and remanded said Order based on the government's identification of conditions which would ameliorate defendants' risk of flight. *See United States* v. *Sabhnani*, Docket No. 07-CR-429, Entry No. 64, at 2.

Subsequently, this Court held conferences with defendants and the government on July 27, August 3 and August 14, 2007 regarding the status of defendants' compliance with the requirements for release as set forth in the Second Circuit's Mandate. On August 21, 2007 and after satisfying the bail conditions, defendants were released to home detention.

Federal Rule of Criminal Procedure 21(a) provides in pertinent part:

Transfer for Trial

(a) For Prejudice. Upon the defendant's motion, the court must transfer the proceed-

> ing against that defendant to another district if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there.

"As a general premise, a change of venue is warranted when the court is satisfied that there exists in the district where the prosecution is pending 'so great a prejudice against the defendant' that 'the defendant cannot obtain a fair and impartial trial.'" *United States* v. *Higgs*, 353 F.3d 281, 307 (4th Cir. 2003) (quoting Fed. R. Crim. P. 21 (a)).

"In order to prevail on a motion under Rule 21(a), the defendant must show 'a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial.'" *United States* v. *Maldonado-Rivera*, 922 F.2d 934, 966-67 (2d Cir. 1990) (quoting *Sheppard* v. *Maxwell*, 384 U.S. 333, 363, 86 S. Ct. 1507, 16 L. Ed. 2d 600 (1966)). *Accord United States* v. *Livoti*, 196 F.3d 322, 326 (2d Cir. 1999). Furthermore, a defendant "must show first that the pretrial publicity was sufficiently pre-judicial and inflammatory and second that the pretrial publicity saturated the community where the trial was being held." *Spivey* v. *Head*, 207 F.3d 1263, 1270 (11th Cir. 2000). In particular, when requesting a transfer of venue prior to jury selection, defendants must demonstrate "prejudicial pretrial publicity that so pervades or saturates the community as to render virtually impossible a fair trial by an impartial jury drawn from that community." *Mayola* v. *Alabama*, 623 F.2d 992, 997 (5th Cir. 1980).

Additionally, in deciding a motion for a change in venue, a district court may consider:

> [T]he extent to which the government is responsible for generating the publicity, the extent to which the publicity focuses on the crime rather than on the individual defendants charged with it, and other factors reflecting on the likely effect of the publicity on the ability of potential jurors in the district to hear the evidence impartially.

Maldonado-Rivera, 922 F.2d at 967.

"The ultimate determination of whether unfavorable publicity renders a fair trial unlikely is committed to the district court's discretion" and the denial of a motion to transfer venue will only be overturned upon a clear showing that the district court abused its discretion. *Id.*

Defendants argue that the publicity surrounding defendants' case has been "unrelenting and virulent" and, in their moving papers, include approximately thirty local newspaper articles dated May 15 through June 28, 2007 as well as examples of radio and television coverage gleaned from the internet.

Defendants further argue that the government engaged in "sensationalized rhetoric" during the bail hearings including characterizing this case as one of "modern day slavery." As a result, defendants claim, the media dubbed this matter the "Slave Case." Defendants also contend that the prosecution invoked class bias by refer-ring to defendants' home as a "mansion." Furthermore, defendants argue, the government portrayed Ms. Sabhnani as persecuting the complaining witnesses by disparaging and refusing to allow them to practice their religion. Defendants claim a transfer of venue is necessary because of the

inflammatory and prejudicial publicity purportedly generated by the government.

The Court finds defendants have not shown that the pretrial publicity in this case is sufficiently prejudicial and inflammatory or that it has so permeated this district that a fair trial cannot be had.

The government's statements concerning Ms. Sabhnani's allegedly violent conduct toward the complaining witnesses along with statements purportedly made to them concerning their religion were offered during the bail hearings to support its contentions that the defendants presented a risk of danger. Similarly, the government's allegations regarding the defendants' wealth and finances supported its contention that defendants posed a serious risk of flight. In fact and in stark contrast to defendants, it appears that quoted material attributable to the government came from court filings and bail proceedings initiated by the defendants. Accordingly, this Court finds that the government did not purposefully generate negative publicity about the defendants and, moreover, that the government's statements were related to the crimes with which defendants are charged.

Defendants' attorneys, on the other hand, have repeatedly put themselves and their clients in the media spotlight by commenting upon, *inter alia*, the merits of this case;[4] the bail proceedings;[5] and attacking the credibility of the complaining witnesses.[6]

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[4] A New York Post article dated May 16, 2007 quotes one of Mr. Sabhnani's former attorneys, Charles Ross, Esq., as stating: "This is not a human-trafficking ring. My client wants to clear

Additionally, defendants' attorneys repeated failure to consult with the government regarding the conditions of release, as ordered by this Court, resulted in additional and unnecessary court proceedings accompanied by further press coverage.

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his name." Mr. Sabhnani's current attorney, Stephen Scaring, Esq. was quoted by Newsday on June 11, 2007 as claiming that "[t]his case is long on spin and short on truth." On July 3, 2007, the New York Times reported that "[d]efense lawyers said the new allegations [that Ms. Sabhnani's mother tried to bribe one victim's son-in-law and that Ms. Sabhnani threatened to have the other victim's husband thrown in jail in Indonesia] would be 'withdrawn or proven to be false."

[5] A New York Post article dated June 7, 2007 reported that Ms. Sabhnani's former attorney, Sumeet Sondi, Esq., stated "O.J. Simpson did not have to meet a $3.5 million bail and pay $15,000 a day for home arrest like the bail package proposed by his client and her husband, Mahender." In the same article, one of Mr. Sabhnani's former attorneys, Oscar Michelen, Esq., was quoted as saying: "We have actually turned this house into the prison the government wants" and "It's like Sing Sing in Muttontown." In a Newsday article dated June 7, 2007, Mr. Michelen was quoted as saying that a revised draft of bail conditions was the equivalent of "Spandau in Muttontown." On July 9, 2007, Newsday reported that Jeffrey Hoffman, Esq., Ms. Sabhnani's attorney, stated "[w]e are grateful that the Court of Appeals agreed with our position" and that Mr. Scaring stated that the defendants were "looking forward to getting out as quickly as possible."

[6] In addition to defendants' court filings seeking an Order requiring one of the victims to undergo a psychological exam, the New York Post reported on July 13, 2007 that the other victim told police she had a relationship with a person living outside the Sabhnani residence. According to that article, Mr. Hoffman said the "revelation from the 'slave' . . . proves the women were lying about being imprisoned by Varsha and Mahender Sabhnani."

Finally, coverage of this case by the media can hardly be said to be "unrelenting and virulent" when, based on defendants' submissions of newspaper articles as well as radio and television accounts, the vast majority of media coverage has coincided with the court proceedings in this matter and amounts to no more than the press reporting the news of the day.

Given the constant pre-trial attention in this case created by defendants' motions in this and the Court of Appeals for release on bail, it is safe to say that the bulk of publicity was generated by defendants, not the government. Accordingly, defendants may not now be heard to complain that a change of venue is warranted based on negative publicity.

Furthermore, requests for transfers of venue have been denied in cases far more notorious than the instant case, including *United States* v. *Yousef*, 327 F.3d 56, 155 (2d Cir. 2004) (district court properly denied request for change of venue on the basis of negative publicity in criminal action for conspiracy to bomb United States commercial airliners in southeast Asia and on charges relating to the 1993 bombing of the World Trade Center) and *United States* v. *Volpe*, 42 F. Supp. 2d 204, 218 (E.D.N.Y. 1999) (request for change of venue based on extensive pretrial publicity denied in criminal action against police officers accused of violating detainee's civil rights).

This Court further notes that "thorough voir dire examinations have been used in this circuit to produce unbiased juries, even in high-profile cases." *Volpe*, 42 F. Supp. 2d at 218. *See Yousef*, 327 F.3d at 155 ("the key to determining the appropriateness of a

change of venue is a searching voir dire of the members of the jury pool").

Defendants having filed no additional pre-trial motions, a Superseding Indictment having been returned in this matter on September 18, 2007, and a jury selection and trial date of October 22, 2007 having been agreed upon and set down in open Court on September 19, 2007, defendants' motion for leave to file additional pre-trial motions is DENIED.

Accordingly, defendants' application for (1) for a change of venue pursuant to Federal Rule of Criminal Procedure 21(a); (2) for reassignment of the instant case pursuant to Local Rule 50.3(c) (*see supra* note 1); and (3) for leave to make additional pre-trial motions is hereby **DENIED**.

SO ORDERED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 12th day of May, two thousand and ten.

UNITED STATES OF AMERICA,

Appellee,

v.

MAHENDER MURLIDHAR SABHNANI,
VARSHA MAHENDER SABHNANI,

Defendants-Appellants.

Docket No. 08-3720-cr(L), 08-3731-cr(CON)
May 12, 2010

Mahender Sabhnani and Varsha Sabhnani having filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*, and the panel that determined the appeal having considered the request for panel rehearing, and the active members of the Court having considered the request for rehearing *en banc*,

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

APPENDIX D

[1] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

VARSHA MAHENDER SABHNANI and
MAHENDER MURLIDHAR SABHNANI,

Defendants.

Docket #MJ-07-591

United States Courthouse
Central Islip, New York
May 15, 2007
3:20 p.m.

TRANSCRIPT OF INITIAL APPEARANCE BEFORE THE HONORABLE A. KATHLEEN TOMLINSON, UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For The Plaintiff: Demetri M. Jones, Esq.
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* * * *

[6] * * * *

MS. JONES: Yes, Your Honor. Your Honor, we've also reviewed both Defendants' pre-trial services reports, which indicate information about their financial status as well as their personal background.

Your Honor, its our position that these Defendants – each of them – should be permanently detained and the reason for that is this particular crime is a crime of incomprehensible brutality and violence and inhumanity. The conduct that these Defendants engaged in was absolutely monstrous.

It truly is a case of modern day slavery. And I know that typically when one hears the word slavery, there are images evoked of ancient pharaohs in Egypt or the Romans and the slaves that they kept, or even Africans who were brought over to the New World and to America and enslaved here.

Nobody would ever think that right here on Long Island, human beings were being brought in from another country, being held and forced to perform domestic labor through threats of [7] violence, physical torture and restraint.

The Defendants in this case owned a beautiful mansion on one of the most exclusive areas of Long Island. They brought these – these Defendants brought the victims into the country. The Defendants allowed them to overstay on their visas and then they took advantage of these victims.

THE COURT: And if I am not mistaken, the Defendants have both acknowledged their awareness that the visas of these two individuals have expired, correct?

MS. JONES: That is correct, Your Honor.

THE COURT: Okay.

MS. JONES: And that absolutely points to a lack of respect for the law on their part. And it isn't as if it were just a one-week overstay of a visa – we're talking about several years that these victims were forced to work in this home after they had illegally overstayed their visas.

It's our position that there is no set of conditions or combination of conditions that could assure the safety of these victims and the victims' families and also assure that these Defendants will appear before the Court as they are required to do.

We say that, Your Honor, because of the nature of the charges against the Defendants, their background where they travel consistently and we have the passports of the husband, passports of the wife that document their extensive travel [8] throughout the world over the last several years.

In addition, Your Honor, the Defendants have access to vast sums of money. We've noted some of those resources in our letter. And as the Court may be aware, the Government has already filed a civil

complaint against the property at 205 Coachman Place for forfeiture. So that is an asset that we maintain is not available for the Defendants to use as any kind of security for their release.

Your Honor, further we think that their release is improper based on danger to the victims and potential danger to victims' families. As the Court is aware, Jane Doe #l, the first victim, entered the United States in approximately 2002. Her visa expired approximately six months later, and yet the Defendants kept her there working in their home.

They forced her to work. They gave her very little nourishment. They beat her – in fact it mainly was Mrs. Sabhnani who administered the beatings to Jane Doe #1. And we're not talking about a mere beating with a slipper or a slap of the hand.

This Defendant – Mrs. Sabhnani – systematically, repeatedly, viciously attacked Jane Doe #1. She beat her with her fists, she beat her with wooden rolling pins, she beat her with wooden brooms, she cut her with a knife, she poured scalding hot water on her.

And then she continued the torture by forcing the victim [9] on several occasions to take repeated showers – shower after shower after shower – for what apparent reason, Judge – some type of punishment in the Defendant's twisted mind.

On top of that, the Defendants made the victims work every day, seven days a week from 4 in the morning 'til 1 in the morning – giving them at least three hours of sleep, or at most three hours of sleep. The Defendants forced the victims to steal food. The Defendants wouldn't even give them adequate food and shelter and clothing, Your Honor.

The Defendants made them sleep on mats on the kitchen floor. They had two kitchens, of course, so I guess it was okay for them to make the victims sleep on one of the floors. And aside from the beatings there was this element of psychological torture. Jane Doe #2 was told by the Defendant, Mrs. Sabhnani, if you ever try to leave and go back to Indonesia, I will make sure that the Indonesian police put you and your husband in jail.

And Your Honor, that's another indication of how vicious this Defendant is, and how far-reaching her money can make her go. She has the assets that she could possibly bribe an Indonesian policeman or at least she certainly put that fear into Jane Doe #2's head.

Your Honor, the Defendants forced these victims to hide because they knew they were illegal and they knew that they were mistreating them. The Defendants forced them to hide and [10] I'm sure the Court has seen the photographs of that tiny, little closet where Jane Doe #1 – #2 was found by law enforcement agents yesterday.

THE COURT: I've seen the photographs.

MS. JONES: At times, we've been told by the victims, that both of them had to hide in that particular space until they were told that it's okay for you to come out now, by I either the Defendant Varsha Sabhnani or her husband, Mahender Sabhnani.

Your Honor, Mrs. Sabhnani is the one who systematically performed the beatings and most of the physical torture. However, Mr. Sabhnani was fully aware and complicit in the torture, the beatings and the hiding. He knew that those victims were being held there. He helped restrain them. He told them

where to hide. He benefitted from their services and he is equally as culpable as his wife in this case.

THE COURT: The photographs reflect certainly – I'm looking particularly at the ones with the – I'm not sure how to describe them – cuts, bruises behind the ears of these victims. I'd like to at least hear about what these are and what the responsibility is for them.

MS. JONES: Your Honor, these are cuts that were inflicted upon Jane Doe #1 by the Defendant, Varsha Sabhnani, with a small pocket knife. The explanation for why they were inflicted, Your Honor, is not quite clear.

[11] According to what Jane Doe #1 told us, the reasons for these punishments and beatings and cutting and scaldings with waters could be something as trivial as the Defendant couldn't find an article of clothing that she was looking for. Or there was an article of food missing from the kitchen somewhere that couldn't be accounted for.

Your Honor, that's the incomprehensible monstrous acts that this Defendant engaged in. It makes no sense. These Defendants, as the Court may be aware, have vast resources. They have a beautiful home, which is worth in excess of $1 million – with no encumbrances on it. They have another home or residence I should say, in Manhattan that's worth well over $1 million.

They have bank accounts that have millions of dollars in them. During the course of the investigation, our law enforcement agents have determined that during approximately 2005, there were in excess of 200 wire transfer deposits into an account maintained by the Defendants into which more than $17

million was wire-transferred from countries in the Middle East including Qatar, Bahrain and I believe, Saudi Arabia. And that is just the tip of the iceberg, Judge.

As you can see from the stacks of passports that we have for each of the Defendants, they travel substantially all over the world. In fact, Mr. Sabhnani traveled in 2006 approximately eight trips to Malaysia. In 2007, he had, I [12] believe, two trips to Singapore.

In addition, he had over the years 12 trips to the United Arab Emirates. In addition to that, he's had trips to Australia, Singapore, China and India. And in fact, Mr. Sabhnani, I believe, had an Indian passport amongst his belongings, which may not be current anymore.

As far as Mrs. Sabhnani, she also travels extensively around the world. She was actually born in Indonesia. She has an Indian passport, which is slated to expire in 2008. And information that we've learned during the investigation is that she planned to travel to India on January – June 24th of 2007. So that's a mere month or less away.

In addition to that, in 2006, Mrs. Sabhnani traveled approximately nine times to Asia. She's traveled to Bangkok, to Thailand. She's also traveled to Hong Kong. She's traveled to London, to the Bahamas. She's also traveled to the United Arab Emirates.

So these are Defendants who have extensive amounts of money at their disposal. They have extensive business and other connections to foreign countries where we would not be able to obtain extradition of them.

Now, Your Honor, just to go back to the threats. Jane Doe #2 is the one who told us about the threats being made that the police in Indonesia could be bought off to put her and her husband into jail. Your Honor, with that kind of a threat and [13] this amount of money, it's our position there's no way that these victims could ever feel safe or that their families could feel safe even as far away as Indonesia, Your Honor.

Finally, Your Honor, one of the things that also leads us to believe that they are a threat of flight is the nature of the offense that they're charged with and the amount of time that they're facing. The statutory maximum is 20 years. However, under the Sentencing Guidelines, they face a minimum of 210 months, Judge. That's a great incentive for someone to travel to another country and not come back.

The evidence in the case is overwhelming against both Defendants. We have corroboration between the two victims. We have physical evidence of the abuse. Jane Doe #2 was actually found by the law enforcement agents cowering in the closet when they came to execute the search warrant. No one in the house told the agents, we have this woman here. The agents had to find her on their own.

So, Your Honor, with all of these factors, we believe that these Defendants should be detained, that there should not be any bail granted for them.

THE COURT: The charging offense here, 1589, presumably is incorporated as a crime of violence, is that correct?

MS. JONES: In this case it is, Your Honor. And there was actual physical violence used, which is an [14] enhancement under the guidelines.

* * * *

[17] * * * *

THE COURT: Mr. Ross, let me just stop you there for a moment. You've had an opportunity, I take it, to look at the photographs that –

MR. ROSS: Yes, Ma'am.

THE COURT: – the Government has presented.

MR. ROSS: Yes, Ma'am.

THE COURT: I'd like to have some indication, having looked at those – obviously they reflect some series of [18] bruises – a cutting certainly – wounds, particularly behind the ears. What am I to do with that?

MR. ROSS: Your Honor, first of all, I think that it's clear from the complaint that there is one housekeeper that is alleged to have suffered these photographed injuries. So that the allegation is not that both were being beaten and both were being subjected to this horrible treatment.

And indeed, kids – there's no allegation of any sort of abuse of the children that are in the home. So what we're talking about here are photographs – obviously very, very troubling photographs of one housekeeper. That housekeeper is obviously telling Ms. Jones that my client was responsible for what appears on those photographs. My client vehemently denies that, Your Honor.

That's what this trial would be about – that's what this case would be about. But when you boil down this case, it is simply about injuries that are alleged to have occurred to one person. And when Your

Honor says that there was cutting, we don't know that.

There is one side of this case that is claiming that there were cuts. There are obviously marks in back of that person's ear. She is giving her version of what happened and that's what the trial is about here, Your Honor.

But this is – at base, this is assault allegations. It's really – that's what the case boils down to. This is not a [19] ring. This is not a human trafficking ring. This district has seen those kinds of cases. This is not the kind of case that affects an entire community. It is not a drug gang or a gang involvement. There are not repeated importing of people from other countries. These are two housekeepers.

Obviously the allegations are disturbing, but when the United States Attorney's Office for the Eastern District of New York stands and asks for detention in a case like this, where what we have – it boils down to assault allegations against a single housekeeper with the clients here who are citizens, who are respected members of their community, who own businesses, who have kids who are going to college, that this is a case that there really are conditions that can take care of this.

Obviously the housekeepers have been removed from the home. They're going to be taken care of. This speculative allegation that somehow because there's some word from one of the housekeepers that my client supposedly said that we can bribe police officers over – that's very speculative, Your Honor. Its not the kind of danger to the community that's presented in cases that Your Honor has seen day in and

day out here. It's a very, very speculative situation. So I would ask you to take all of that into account.

* * * *

[24] * * * *

MS. JONES: And Your Honor, if I may just respond. Something that Mr. Ross said that smacks to me of very outrageous allegation that there's a mentally ill victim. I suppose if you or I were subjected to the kind of torture and beatings that she was subjected to, maybe we'd be a little emotionally upset too. This sounds just like the typical rehashing, updated version of blame the victims.

Judge, the victims in this case are two women from Indonesia. They don't speak – barely any English. The way they communicated with the hospital workers and the police and other agents in this case was mostly through hand gestures and motions. They didn't have any money. They didn't have any [25] friends. They barely knew where they were. They didn't have their passports.

So to say that, oh, while the Defendants were away – and by the way, the only people we're talking about who were out of the house was Mr. and Mrs. and not necessarily at the same time – they're supposed to escape.

Judge, there is absolutely no requirement in the law that victims of this type of abuse – and I think it's frankly absurd to think that there's some kind of a burden on a victim of this type of abuse to escape, that's just absurd, Your Honor.

As far as the fact that other criminals – white-collar criminals are allowed to travel for business and be out on bond. Well, this isn't a white-collar

case, Judge. This is a violent crime perpetrated over the course of several years. We have two victims, each of which corroborates the other.

And as far as Mr. Ross' implication that oh, maybe only one victim was really beaten – the other one wasn't really beaten. That again is absurd. The abuse here was much more than just physical abuse. Just because Jane Doe #1 happened to bear the brunt of it, doesn't make it any more acceptable that Jane Doe #2 was threatened and held her against her will.

And in addition we have some recent information that indicates that Jane Doe #2 was physically abused, although she didn't necessarily suffer scars the way Jane Doe #1 did.

[26] Your Honor, the bottom line in this case is, this isn't some silly little assault case. These are two women who were systematically forced to labor, 21 hours a day – they had no passports, they were not allowed to leave the home, they had no friends. They barely spoke English. They had the clothes on their back. They had no money and there was no way that they were going to be able to just walk out of that house at will.

It took a lot of courage for Jane Doe #1 to decide that she was going to get out of that house the way she did. And the complaint describes how she was found, wearing a pair of pants, with a towel wrapped around her top, people thinking she was some homeless person.

Your Honor, these are particularly vulnerable victims. And to say that this is just the workings or the ravings of an emotionally distraught woman is just absurd.

* * * *

[27] * * * *

MS. JONES: * * * Your Honor, again we don't believe that a release is appropriate in this case. This isn't a white-collar crime. This isn't about a single assault. This is about a systematic crime committed over the course of several years and saying that Mr. Mahender Sabhnani didn't physically strike any of the victims – well, he certainly didn't do anything to help them. Your Honor, they have access to money. They travel on a regular basis.

* * * *

APPENDIX E

[1] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

VARSHA MAHENDER SABHNANI and
MAHENDER MURLIDHAR SABHNANI,

Defendants.

Docket #MJ-07-591

United States Courthouse
Central Islip, New York
May 17, 2007
2:50 p.m.

TRANSCRIPT OF BAIL HEARING BEFORE THE
HONORABLE A. KATHLEEN TOMLINSON,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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* * * *

[3] * * * *

MS. JONES: * * * We continued interviewing Jane Doe II at the hospital. And she indicated she had been reluctant to tell us before, because she fears for the safety of her husband who is in Indonesia, as well as her own safety, that she didn't want to tell us everything. But now she felt she could, because she felt safer. And she indicated she, too, was physically abused by the defendant Varsha Mahender Sabhnani.

And she told us she was struck on the top of the head with a closed fist while the defendant was wearing a rather large ring which made her quite

dizzy. She also indicated that the next day the defendant was still angry at her for whatever had set her off the day before, and she hit her in the face with a metal spoon.

She also indicated and recounted for us that she, too, was forced to take these cold baths, and the [4] starvation and sleep deprivation. And it was a continuous thing.

Whenever the defendant felt like punishing either Jane Doe I or Jane Doe II, the meager food they normally got was reduced to slices of bread.

She indicated to us also that on occasions when the defendants left the home they would be told to stay away from the windows, don't talk to anyone. There are occasions we have been told about when the entire family travelled away from the residence, usually in the month of June. And during that time Jane Doe I and Jane Doe II were left in the home alone. And they were told to stay away from the windows. Don't talk to anyone. We have cameras in the house, and I can see every move you make.

They were afraid to escape because they had no knowledge of the English language. They had no passports. They had nowhere to go, and they feared for the safety of their families in Indonesia if they were to leave.

In fact, at one of their meetings, Jane Doe II told the defendant Varsha Mahender Sabhnani that she wanted to go home. And the defendant's response was, fine, you can go home, but first pay me the money you owe me; because if you don't, I will have you and your husband arrested for fraud. And that was her response for a request to go home.

[5] Your Honor, in the course of reading Mr. Ross' submission, he indicates that the sentencing guideline enhancements that the government envisions for this case are not applicable. And we believe that they are. We have now, as a result of the second search warrant, obtained a knife that we believe was used to harm at least one of the victims. We have obtained bloodied tissues, and the wooden rolling pin, your Honor.

If the Court would like to see those items, we have them here.

THE COURT: Yes. Actually, I would.

MS. JONES: As your Honor can see, this is the knife that Jane Doe II described and described where it was hidden within the home, which we located last night in the search.

These are bloodied tissues which were used to clean up the victim after having been attacked by the defendant on one occasion.

This is the rolling pin, the wooden rolling pin which has quite a bit of weight to it and obviously clearly can make some serious physical injuries if someone is struck with it hard enough.

* * * *

[6] * * * *

MS. JONES: As far as enhancements for using a dangerous weapon, I certainly believe that that enhancement is going to apply.

As far as serious physical injury being suffered, Jane Doe I was in the hospital being treated for those abrasions behind her ears and lacerations and

infection. And clearly, that's a serious physical injury.

There are also permanent scarring on her body we believe caused by the defendant. So, under the sentencing guidelines those are injuries that are all permanent, or at least requiring medical treatment and hospitalization.

* * * *

[8] * * * *

MS. JONES: * * * Your Honor, further, there were other bizarre types of punishments and emotional torture and psychological torture.

In fact, one of the things that the defendant did, she took several pairs of glasses and wrapped them in clear tape and forced Jane Doe I to wear them. And at times she forced Jane Doe II to apply tape to Jane Doe I's face at the eyes and at the mouth. She would cut up the clothing that belonged to the victims.

Jane Doe II often prayed outloud. She is a Muslim. And on one occasion when she was saying her prayers the defendant said to her – the defendant Varsha Mahender Sabhnani said to her, your god, Allah is, and she [9] used a four letter word for fecal matter. My god is better. Look at what he gave me. He gave me good fortune and four good kids.

So the torture was not limited to physical injuries. There was a lot of emotional and psychological abuse being heaped on these women, too.

Your Honor, when the police came – even before the police came, Jane Doe I had already escaped in the early morning hours when Mrs. Sabhnani awoke. She went downstairs and found Jane Doe II going

about her duties and couldn't find Jane Doe I. And she asked 1 where 2 was, and Jane Doe II said she didn't know and continued about her duties. And when she could not find Jane Doe I, the defendant Varsha Mahender Sabhnani became frantic. She started asking Jane Doe II where is she? Is she dead? Is she dead?

Then she went out of the house to look for her. She came back home and woke her family, wherever they slept and woke them. There was a frenzy of activity. Jane Doe II was told to go out in the backyard and look in the pool and see if she is in the pool area. Then the police came.

When the police came there was more panic, and Jane Doe II was told, you have to hide, because you are here illegally. If they find you, they are going to [10] deport you.

Jane Doe II was found eventually as you know, hiding in that tiny little closet.

* * * *

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

VARSHA MAHENDER SABHNANI and
MAHENDER MURLIDHAR SABHNANI,

Defendants.

Indictment No. 07 Cr. 429 (TCP)

AFFIRMATION

SUSAN C. WOLFE, an attorney duly admitted to practice law before this Court, affirms as follows:

1. I am a member of the firm of Hoffman & Pollok, LLP, attorneys for the defendant Varsha Sabhnani. I submit this affirmation on behalf of defendants Varsha and Mahender Sabhnani in support of their motions for: 1) a change of venue pursuant to Rule 21(a) of the Federal Rules of Criminal Procedure based upon prejudicial pretrial publicity; 2) reassignment of the case to Judge Spatt, in the interests of justice, based on the Local related-case rule and to avoid the appearance of impropriety and judge-shopping; and 3) leave to make any other or additional motions, including motions to suppress,

necessitated by the government's production of discovery just one week ago.

2. The facts necessary to these motions, including a summary of the prior proceedings, are set forth in the accompanying memorandum of law, and are incorporated herein. Those facts and circumstances stated upon information and belief are based upon counsel's conversations with the government's attorney and other information gleaned in the course of our investigation of this case.

3. In Point I of the accompanying Memorandum, the defendants explain why the pervasive and inflammatory pretrial publicity surrounding this case requires a change of venue pursuant to Rule 21(a) of the Federal Rules of Criminal Procedure. In support of that motion, attached hereto as Exhibits A through J and M are internet printouts of news reports regarding this case. Attached as Exhibit K is a summary of the print articles my paralegal, Margaret Kaufman, located through and downloaded from the internet, listed by date, news source, title of the article and summary of the coverage. Attached as Exhibit L is a summary of the radio and television reports we have located through and downloaded from the internet, listed by date, news source, title of the article and summary of the coverage. Submitted separately under seal are photographs of the alleged victims published in a newspaper on May 15, 2007, the day of the arraignment. They are submitted under seal so that their filing does not create any occasion for the re-publishing, or publishing by other news organizations, of the photographs.

5. In Point II, the defendants set forth the reasons why this case should be re-assigned to Jude Arthur D. Spatt in accordance with the related-case

rule and in the interests of justice. As set forth therein, a related civil forfeiture case, assigned to Judge Spatt, was filed prior to the indictment in this case. The government dismissed the civil case the day after defense counsel moved to consolidate the cases before Judge Spatt. Re-assignment of this case to the first-assigned Judge will serve the interests of justice, remove the appearance of impropriety and remove any incentive for litigants to judge-shop.

6. In Point III, the defendants seek leave to make any other or additional motions, including motions to suppress, necessitated by the production of discovery materials by the government only last week. Attached as Exhibit P is a discovery request sent to the government on June 27, 2007. Despite earlier written requests by counsel for Mahender Sabhnani, the government did not produce any discovery in this case until July 3, 2007.

WHEREFORE, for the reasons presented in the accompanying Memorandum of Law, your deponent prays for an order granting the defendants all of the relief enumerated in the Notice of Motion and requested herein, together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
July 10, 2007

SUSAN C. WOLFE

EXHIBIT A

CRUEL L.I. SLAVE MASTERS

New York Post

May 16, 2007

By STEFANIE COHEN, KIERAN CROWLEY and KATE SHEEHY

A "monstrous" millionaire couple from Long Island's Gold Coast kept two Indonesian women as slaves for five years in their tony estate-turned-house of horrors - until one victim was found wandering the street half-naked this week muttering, "Master," authorities said yesterday.

Varsha Mahender Sabhnani and her husband, Mahender Murliddhar Sabhnani - perfume moguls from the mega-rich community of Muttontown - were hauled into federal court yesterday to face charges including beating, cutting and scalding one of the victims and committing "incomprehensible . . . inhumanity" against both.

"Home, I want to go home," sobbed one of the middle-aged women, identified as "Samirah," when she was found bruised and battered at a Dunkin' Donuts on Jericho Turnpike in Syosset at around 6 a.m. Sunday.

Less than a mile away, authorities said, was what had become her hell on earth: an antiques-stuffed, cedars-hakers mansion where she was bea-

ten with brooms and rolling pins, repeatedly sliced on the ears with a paring knife, starved and forced to sleep on the kitchen floor.

Varsha - a 45-year-old mother of four - was the main torturer who doled out the horrific punishment while her husband, 51, watched, officials said. The wife is Indonesian; Mahender is from India.

Varsha's cruelty included forcing Samirah to take as many as 30 ice-cold showers in a row, run up and down a flight of stairs 150 times as fast as she could - and gulp down at least 25 "extremely hot chili peppers at one time," according to the arrest warrant.

"The conduct the defendants committed is monstrous," said Assistant U.S. Attorney Demetri Jones. "It's truly a case of modern-day slavery."

Authorities said the victims' nightmare began after they were brought to the United States by the couple to work as house servants.

They were told they would be paid $200 a month, although Samirah told authorities she later learned the Sabhnanis sent only half that amount to her daughter back in Indonesia.

The immigrant women arrived to find their new home, 205 Coachman Place, a sprawling, two-story manse in one of New York's most exclusive enclaves. Two large, stone statues of lions greet visitors at the driveway, a brand-new black Cadillac sits in front and a large, lagoon-like pool, waterfall and built-in stainless-steel barbecue grill grace the back yard.

Their new bosses ran a multimillion-dollar business from home, peddling Royal Mirage perfume

throughout the world through at least five companies.

The Sabhnanis also own a $1.4 million, two-bedroom condo on Broadway in Manhattan and were known to frequently jet to such countries as Singapore, Bahrain and Australia for business and to visit family.

But if the victims - ages 51 and 46 - had dreams of partaking in even a smidgen of their employers' good life, they were sorely mistaken, officials said.

The Sabhnanis demanded the pair's passports as soon as they set foot in the country, the victims told authorities.

They then began working 21-hour days as house servants, and when they were allowed to sleep for the remaining three hours in the day, it was on thin, 3-by-6-foot white mats on the floor of one of the home's two kitchens, the women said.

Beatings were routinely administered either in the laundry room or bathroom, they said, with "a rolling pin, bamboo stick and a broomstick." Samirah said Varsha also tossed scalding water on her.

The feds noted in court papers that Samirah "bears highly visible scars that appear to be permanent over much of her body.

"She also has deep, open knife wounds behind her ears, which were inflicted by [Varsha]." Samirah also showed cops at the house "a door stained with [her] blood that was the result of an injury sustained during a beating" by Varsha, according to court papers.

The abused women were starved to the point that they began hiding food, authorities said.

The second victim, identified only as "Nona," led authorities to the spot above a drop-ceiling panel in one of the kitchens where she stashed her meager but treasured personal belongings, as well as snacks she could sneak from the kitchen.

Nona told authorities she was once forced to strip naked and take as many as 10 icy showers in a row for "perceived wrongdoing."

She said that at one point, Varsha warned her that if she ever tried to flee, she would "use her considerable financial resources to ensure that Indonesian police jailed [her] and [her] husband, who is in Indonesia."

Whenever strangers came to the home, the terrified women said, they were ordered to hide in the basement or garage.

They were allowed out only at night - to take out the garbage.

After Samirah was found wandering and told authorities her tale, officials went to the house and discovered Nona cowering in a 3-by-3-foot closet under the stairwell leading to the basement.

Samirah was dressed in pants and a towel, weeping and carrying two plastic bags, when Dunkin' Donuts manager Adrian Mohammed, 26, spotted her early Sunday.

He said he thought she was homeless, so he gave her coffee, bagels and a jacket.

Asked where she lived, she pointed to her Indonesian passport - which Varsha had allegedly returned to her after it expired - and pleaded, "Home."

"She started crying," Mohammed said, and when he asked where she lived, she pointed in the direction of the Sabhnanis' home and said, "Master."

"She said the word, 'Master,' then she made a motion like she was getting slapped," Mohammed said yesterday.

He said she had dozens of perfectly circular bruises on her arm, like pinches. Her ears also had sores and cuts from what authorities said was more of Varsha's cruelty: nicking her with a paring knife when she was deemed particularly "bad" - suspected of stealing food because she was hungry or unable to find an item around the house.

"I felt bad for the lady, so I called 911," Mohammed said.

At the Sabhnanis' arraignment in Central Islip yesterday, the couple sat together - but with separate lawyers.

As the pair sat down and looked back at their 22-year-old daughter in the third row, the young woman burst into tears.

The couple was held without bail after Jones argued that they were an extreme flight risk, given their international connections and bank accounts.

Mahender's lawyer, Charles Ross, insisted, "This is not a human-trafficking ring. My client wants to clear his name."

He said the couple had been out of the country for up to 10 months at a time, leaving the alleged victims plenty of opportunity to leave the house if they wanted.

EXHIBIT B

Bail denied for couple accused of keeping slaves

WABC-TV

June 11, 2007

A Long Island couple, accused of enslaving two Indonesian woman in their Muttontown mansion, were denied bail by a federal judge in Central Islip Monday.

A federal judge ruling this afternoon that the couple is flight risk, and shouldn't be allowed out of jail while awaiting trial.

A potential agreement two weeks ago would have allowed the millionaire couple to post $3.5 million bail, with the provision that they remain under home detention with electronic monitoring and 24-hour surveillance, all paid for by them.

U.S. District Court Justice Thomas Platt ruled then that 35-year-old Varsha Mahender Sabhnani and her husband, 51-year-old Mahender Murlidhar Sabhnani, could be released from jail if an agreement were reached, despite the vehement objections of prosecutors. They contended that the Long Island couple may have hidden financial assets they could use to flee the country.

Platt says he only offered the couple's lawyers an opportunity to reach an agreement with prosecutors that would include the house arrest. He ruled today

that no conditions were suitable to allow the couple to remain under house arrest until their trial.

Prosecutors also argued that Varsha Sabhnani's mother in Indonesia had sought to bribe one of the victim's family with $28,000 to make the case go away. They also claimed the suspect's mother threatened to have one of the "slaves" killed after she complained about abusive conditions in the Sabhnani home.

The couple's U.S. passports were confiscated when they were arrested, and their bank accounts were frozen.

The Sabhnanis, who operate a worldwide perfume business out of their mansion, were arrested May 13 after one of the Indonesian women was found wandering outside a nearby Dunkin Donuts shop. She apparently had escaped the night before when she was putting out the trash, prosecutors said.

Unable to speak English fluently, she showed her wounds and Indonesian passport to a manager at the shop and said, "Mister, mister, I want to go home, Indonesia," said Indonesian Foreign Ministry spokesman Kristiarto Legowo.

The second victim was found when agents from Immigration and Customs Enforcement searched the house later the same day.

The Sabhnanis have been charged with two counts of forced labor and two counts of harboring illegal residents. Each faces up to 20 years in prison if convicted.

Assistant U.S. Attorney Demitri Jones has called the allegations "a case of modern-day slavery."

The women, prosecutors said, were subjected to beatings and scalding water thrown on them, forced to climb stairs repeatedly and take as many as 30 showers in three hours, all as punishment for perceived misdeeds. In one case, prosecutors said, one of the women was made to eat 25 hot chili peppers at one time.

One of the women also told authorities she was cut behind her ears with a pocket knife and both were forced to sleep on mats in the kitchen. They were fed so little, they claimed, that they stole and hid food from their captors.

Identified in court papers as Samirah and Nona, the women said they were promised payments of $200 and $100 a month, but federal prosecutors said they were never given money directly. One of the victims' daughters living in Indonesia was sent $100 a month, prosecutors said.

They have since been cared for by Catholic Charities; a spokesman declined to comment on their current condition, citing privacy concerns.

EXHIBIT C

Couple Held Two Servants Captive for Years, U.S. Says

New York Times

May 16, 2007

By PAUL VITELLO

Federal prosecutors charged a wealthy Long Island couple on Tuesday with keeping two Indonesian domestic workers as virtual prisoners in their home for more than five years under conditions they called "modern-day slavery," beating one severely and paying them very little.

The couple, Varsha Mahender Sabhnani, and Mahender Murlidhar Sabhnani, 51, who the authorities say run a multimillion dollar perfume business from their home in Muttontown, pleaded not guilty to the charges at their arraignment here before Magistrate Judge Kathleen Tomlinson of United States District Court. They were charged under a federal law that makes it illegal to force someone to work under threat of violence.

EXHIBIT D

SLAVE FLICK A HIT WITH CRUELLA JR.

New York Post

May 17, 2007

By KIERAN CROWLEY, LORENA MONGELLI and ANDY GELLER

The feds are probing whether a millionaire couple accused of enslaving and torturing two Indonesian women at their ritzy Long Island home were aided by their four kids - including their eldest, shopaholic daughter, who says her favorite movies include "Human Trafficking," a gritty sex-slave drama.

Pooja Sabhnani, 22, her sisters, Tina, 20, and Dakshina, 19, and her brother, Rahul, 17, the children of Varsha Sabhnani and her husband, Mahender, are under investigation in the victims' barbaric, five-year ordeal in which they were beaten, tortured, starved and forced to work 21 hours a day, a law-enforcement source told The Post.

Pooja, a 2006 graduate of the Parsons School of Design who works for her parents designing packaging for their lines of trendy, international perfumes, says on her Friendster.com Web site that her favorite movies include "Human Trafficking," a two-part miniseries that aired on the Lifetime cable channel in October 2005.

The harrowing drama, starring Mira Sorvino and Donald Sutherland, reveals the brutal torture of young women kidnapped, drugged, raped and sold into sex slavery.

On her Web site, Pooja says her other favorite movies include the horror film "The Shining" and "The Transporter," a flick about slavery in which an Asian girl is trussed up in a bag and stuck in a car trunk.

She says she loves "shopping, fashion designing, watching movies, reading magazines . . . did I mention shopping?"

Pooja worked with defense lawyers to help her parents after they were arrested at their Muttontown mansion Monday night and went to their arraignment Tuesday, sources said.

She and her siblings are being investigated "to see if they had any part in the abuse," the law-enforcement source said.

Prosecutors say Varsha inflicted "Cruella De Vil" punishment on one of the women, "Samirah," 51, beating her repeatedly in the face, slicing her behind the ears with a paring knife, forcing her to run up and down a flight of stairs 150 times and to gulp down 25 chili peppers at a time.

Her husband did nothing to stop her, prosecutors say.

Samirah and the other victim, "Nona," 46 - who was forced to take 10 icy showers in a row - are recovering at Nassau University Medical Center in East Meadow, L.I.

They will be offered special visas to allow them to remain in the United States, with the option of returning home later, sources said.

At 5:30 p.m. Monday, 15 federal immigration agents armed with a battering ram raided the Muttontown mansion and left with a door, apparently one that was stained with Samirah's blood when she got a beating.

While they were there, Pooja, hiding her face under a hoodie, arrived home in her black Porsche Cayenne SUV. She didn't talk to reporters.

The Sabhnanis moved to Muttontown in 1993 after selling their home in Hicksville to Rekha Chichara and her husband, Jitendranath.

Rekha said she was shocked by the arrests. "When I came to see the [Sabhnanis' new] house, I remember seeing a maid sitting in the kitchen," she said. "She was very well dressed. I was thinking she was very lucky. She seemed like she was part of the family."

A neighbor in Hicksville described Mahender as "a very religious, God-fearing man."

"I cannot imagine that he would do something like this," he said. "He was very loving to his kids. They were an excellent family." A friend said Mahender and his son, Rahul - who attends Syosset HS - regularly worship at the Guy Gobind Singh Sikh Center in Plainview. "The high school is in shock," the friend said. "Teachers can't believe it."

EXHIBIT E

$3.5M BAIL FOR CRUELLA AND HUBBY

New York Post

May 18, 2007

By SELIM ALGAR

A Long Island couple accused of ruthlessly imprisoning a pair of immigrant servants now faces the prospect of home detention themselves.

Varsha Sabhnani, 45, and her husband, Mahender Sabhnani, 51, were offered bail yesterday in Central Islip, but ordered by Judge Kathleen Tomlinson to remain under strict house arrest until the beginning of any trial.

Varsha Sabhnani, who stands accused of directly abusing the two women, had her bail set at $2.5 million. Her husband, who authorities say stood idly by as the immigrant Muslims were exploited, beaten and starved, had bail set at $1 million.

They are expected to post bail in the coming days as their financial resources are accounted for.

Appearing gaunt and fatigued, Varsha Sabhnani was in court yesterday attired in a blue prison uniform while her husband wore an orange one. They managed to smile weakly at their daughter, Pooja, as she fought back tears in the front row of the packed courtroom.

EXHIBIT F

CRUELLA GALS HAVE FAITH

New York Post
May 19, 2007

By STEFANIE COHEN

The women kept as slaves by a wealthy Long Island couple are happy they can now practice their Muslim religion freely after years of ridicule while in captivity.

Indonesian Consul General Trie Edi Mulyani said she ordered Korans and special prayer clothes for "Samirah" and "Nona" - two Indonesian women allegedly enslaved for five years by Long Island perfumers Varsha and Mahender Sabhnani.

Prosecutors said the women were often ridiculed by the Hindu Varsha when they tried to pray in peace.

According to prosecutors, the house mistress told her two domestic servants that their God was "s - - t" and that "My God is better."

EXHIBIT G

Slaves of Long Island

New York Times

May 20, 2007

A small act of kindness by workers at a doughnut shop early last Sunday has opened a window into a horrifying story of exploitation and cruelty. The accusations highlight the serious need for New York State to crack down on the trafficking of people for sex and labor, and arose, coincidentally, just as a deal was being reached in Albany on a bill to do that.

According to federal prosecutors, a wealthy couple in Muttontown kept two Indonesian women in virtual slavery for years, paying them a pittance for long hours of domestic labor punctuated with sickening abuses. The couple, Varsha Mahender Sabhnani and Mahender Murlidhar Sabhnani, who run a multimillion-dollar perfume business from their home, are said to have given the women little food and forced them to sleep on mats on the floor and to hide when visitors came. Mrs. Sabhnani, according to court papers, often beat one of the women with a stick, scalded her, cut her ears with a knife and burned her with cigarettes and scalding water. In one instance, prosecutors said, she forced her victim to choke down hot chili peppers.

Slaves of New York

New York Times

May 20, 2007

New York City and its wealthy suburbs are full of desperate immigrants who suffer greatly at the hands of abusive employers. Many factors help to wrap these crimes in silence, especially the immigrants' ignorance and shame, and their fear of arrest and deportation.

It is thus cause for considerable cheer that New York State's leaders last week agreed on a long-awaited measure that would crack down on the trafficking of people for sex and labor while offering help to the victims. Any doubts that we badly need such a law were dispelled by a horrifying story of exploitation and cruelty that surfaced last week in Long Island.

New York: Muttontown: 2 Indicted On Slave Charge

New York Times

May 24, 2007

A millionaire couple accused of keeping two Indonesian women as slaves in their Long Island home have been indicted on federal charges of forced labor and harboring illegal residents, prosecutors said yesterday. The couple, Varsha Mahender Sabhnani, and her husband, Mahender Murlidhar Sabhnani, who operate a perfume business from their home, were arrested last week after one servant was found wandering outside a doughnut shop. They were indicted on Tuesday and are to be arraigned today. Prosecutors said the two servants were beaten, had scalding water thrown on them and were held against their will. Charles A. Ross, Mrs. Sabhnani's lawyer, said that the couple traveled extensively and that the two servants were free to leave whenever they wished.

New York: Central Islip: New Accusations In Slavery Case

New York Times

May 25, 2007

A Long Island couple accused of keeping two Indonesian women as slaves were ordered held in jail yesterday amid new allegations that the women's relatives were threatened and offered bribes. The couple, Varsha Mahender Sabhnani, 35, and her husband, Mahender Murlidhar Sabhnani, 51, who run a perfume business from their Muttontown home, pleaded not guilty in Federal District Court to slavery charges. Prosecutors said Ms. Sabhnani's mother, who lives in Indonesia, tried to bribe one victim's son-in-law with $2,500. They said Ms. Sabhnani threatened to have the other victim's husband, also in Indonesia, arrested if the woman did not obey her. Defense lawyers said the new allegations would be "withdrawn or proven to be false."

EXHIBIT H

SLAVE 'SLAY THREAT'

New York Post
May 31, 2007

By KIERAN CROWLEY

The son of a slave brutalized by a millionaire Long Island couple was told he'd have to pay $4,500 to get his mom home - or she could be killed, according to his statements read in court yesterday.

Leo Dwinanto, son of the enslaved "Samirah," a servant to Varsha "Cruella" Sabhnani, said when he pressed the depraved mistress' mother to just let his beloved mom return to Indonesia, she warned him: "Don't ask too much. I can kill your mother."

His mom had written him last year, saying that she was being abused by Sabhnani and pleaded for help.

"She was being beaten by [her] employer for making mistakes and forced to take repeated showers and eat hot chili peppers," Dwinanto said in the statement read by prosecutor Mark Lesko in Central Islip federal court.

The son said that after Sabhnani, 45, and her husband, Mahender, 51, were arrested earlier this month on abuse and assault charges, Varsha's mother offered him $28,000 if the victim would leave the

United States and not cooperate with the prosecution.

"I am aware that Joti [the suspect's mother] is rich and powerful and I am fearful for my own safety and that of my family," Dwinanto said.

Varsha Sabhnani's lawyer, Charles Ross, said the written statement was not admissible because it was not a sworn statement.

Despite the horrific charges of "inhumane" brutality against their servants, Judge Thomas Platt showed mercy to the Sabhnanis, ruling they can await trial in their luxurious estate.

He ordered the unusual home jailing arrangement, which includes a $3.5 million cash bail and an agreement that the couple pay for their own 24-hour surveillance.

The Sabhnanis run their international perfume business out of their Muttontown mansion, which features an in-ground lagoon pool with waterfall and built-in stainless steel barbecue area.

Once details are worked out, federal agents will monitor the slavery and torture suspects with phone and computer taps, and electronic ankle bracelets.

The couple will have to foot the bill for taps on their phones and perhaps on their computer. Both may be recorded day and night inside their posh prison, the judge said.

"The phones will be tapped . . . and 24-hour surveillance and electronic monitoring, paid for by them," Platt said.

When the judge ordered the defense and prosecution to work out the details of the home imprison-

ment, Varsha Sabhnani embraced her lawyers and turned to her tearful daughter, Pooja, 22, in the third row of the courtroom and made a hugging motion.

Outside court, Ross said he was "very pleased with the judge's decision today."

EXHIBIT I

Judge rips detention plan in slavery case

Newsday

June 4, 2007

By ROBERT E. KESSLER

It's back to the drawing board - and coming up with a lot more cash - if a wealthy Muttontown couple wish to be released from prison to await a trial on slavery charges.

A federal judge yesterday blasted the proposed plan for home detention for Varsha Sabhnani and her husband, Mahender. The proposal would have cost the couple at least $5,000 a day, along with $3.5 million in bail, but the judge called it grossly inadequate and "an open invitation to a tea party . . . a virtual open house.

"You're going to have to make it a jail, not a country club," U.S. District Judge Thomas Platt told defense attorneys at a bail hearing for the couple at the U.S. District Court in Central Islip.

Platt called the Sabhnanis a real flight risk and said that home detention under the proposal would not ensure that they would actually be confined to their home at 205 Coachman Place E. and could not flee.

Platt also suggested the Sabhnanis still might be considered something of "a danger to the community" and said he did not want them to be in a position where other people could freely enter and leave the house to carry messages back and forth for the couple.

The proposed plan called for one private guard paid for by the Sabhnanis to be located in the mansion's basement around the clock to monitor activities in their home as well as control the only telephone and fax machine that would be permitted to remain connected. It also would require that the Sabhnanis wear electronic ankle monitors.

"I want adequate guards - 24 hours a day - not one man sitting in the cellar," Platt said.

Platt said that, as he envisioned a proper home jail for the Sabhnanis, there would be, at the very least, an additional two guards outside at all times; there would have to be floodlighting around the perimeter of the house; all the entrances would have to be sealed except for one door; and anybody entering or leaving the house, including the four Sabhnani children, would have to sign waivers consenting to be searched at any time.

Platt also wanted all the expenses to be paid for by the Sabhnanis in advance so that, he said, the government does not get stuck with a bill should they flee.

Varsha Sabhnani's attorney, Charles Ross of Manhattan, said after the hearing, "We believe that all the conditions can be met."

Federal prosecutors Mark Lesko and Demetri Jones declined to comment.

The Sabhnanis have been held in federal prison since they were arrested almost three weeks ago on charges of enslaving and torturing two Indonesian woman and harboring them as fugitive aliens. The women were hired ostensibly as housekeepers, but their work visas expired years ago.

Judge Platt set Wednesday for the next hearing.

New plan for couple to do time at home

Newsday

June 6, 2007

By ROBERT E. KESSLER

Attorneys for a wealthy couple charged with enslaving two Indonesian women hired as housekeepers, filed a new, detailed plan yesterday for turning the accused's Muttontown mansion into the equivalent of a jail.

The attorneys for Varsha Sabhnani and her husband, Mahender Sabhnani, acted after U.S. District Judge Thomas Platt on Monday declined to release the couple from jail pending trial on the basis of a less stringent plan presented by defense attorneys.

Platt blasted that plan - although it would have cost the Sabhnanis at least $5,000 a day, along with $3.5 million in bail - as providing more of a country-club or tea-party atmosphere than that of a penitentiary.

Under the new plan, tailored to meet several of Platt's objections, the cost would rise to more like $15,000 a day, including two private guards around the clock at the only two doors that would remain unsealed at the Sabhnanis' home at 205 Coachman Place E. The original plan called for only one guard monitoring activities in the home from the basement.

The new plan was prepared in anticipation of a new bail hearing scheduled for today before Platt at the U.S. District Court in Central Islip.

In a letter to both defense attorneys and prosecutors sent after the new plan had been filed in federal court in Central Islip, Platt said he would consider releasing the Sabhnanis "if the attorneys for the defendants and the United States attorney reach an agreement as to all the proposed terms of the release, but not before."

Attorneys for both the Sabhnanis and federal prosecutors, who had opposed releasing the couple, could not immediately be reached for comment.

CRUELLA DEATH THREATS

New York Post

June 7, 2007

By KIERAN CROWLEY

The Long Island millionaire husband and wife charged with treating their domestic workers like slaves have received death threats behind bars - and their lawyers demanded they be released immediately on bail.

Sumeet Sondi, the lawyer for wife Varsha "Cruella" Sabhnani, said O.J. Simpson did not have to meet a $3.5 million bail and pay $15,000 a day for home arrest like the bail package proposed by his client and her husband, Mahender.

Central Islip federal Judge Thomas Platt said legal complications and a prior scheduled conference made it impossible for the Sabhnanis to get out of jail before Monday.

"They should be protected like the president of the United States," said Sondhi, as Varsha wrung her well-manicured hands.

"They won't get any special treatment," an annoyed Platt replied.

The perfume magnates agreed to pay for round-the-clock guards, electronic ankle bracelets, video surveillance and other measures to turn their Muttontown mansion into a lockup.

"We have actually turned this house into the prison the government wants," said Mahender Sabhnani's new lawyer, Oscar Michelen. "It's like Sing Sing in Muttontown."

No bail yet for couple accused in slave case

Newsday
June 7, 2007

By ROBERT E. KESSLER

The affluent Muttontown couple accused of enslaving two Indonesian women will have to wait at least until Monday to determine whether a federal judge will release them on bail to home detention.

The judge, Thomas Platt, said yesterday at a court hearing in Central Islip that before he would issue a ruling in the matter, attorneys for the couple, Mahender Sabhnani and his wife, Varsha, would have to respond in writing to the latest court papers. The prosecutors said in the papers that they continue to object to the Sabhnanis being released under any conditions as both a flight risk and having the potential to obstruct justice.

Platt also said that a separate hearing would be held Monday to determine if one of the couple's new attorneys has a conflict of interest and can't represent Varsha Sabhnani. The Sabhnanis fired their former attorneys without explanation late this morning, shortly before the start of the scheduled hearing.

The prosecution papers, filed late Tuesday by Assistant U.S. Attorneys Mark Lesko and Demetri Jones, were a response to Platt's statement that both defense attorneys and prosecutors would have to

agree on bail conditions before he would consider releasing the couple.

When Varsha Sabhnani's new attorney, Sumeet Sondhi, continued to argue that the couple should not have to be kept in jail until Monday, an exasperated Platt ordered him to sit down or be thrown out of the courtroom.

In reference to the possible conflict of interest, Lesko objected to Sondhi representing Varsha Sabhnani, saying he already represented a client who had appeared before the grand jury investigating the slavery case.

Sondhi declined to comment after he left the court.

In anticipation of today's hearing, the Sabhnanis' former attorneys had filed a new plan to turn the couple's home into a jail. That plan increases the initial daily cost to them of home detention from $5,000 a day to as much as $15,000 a day, including a boost in the number of guards posted around the clock from one to three.

Mahender Sabhnani's new attorney, Oscar Michelen, said afterward he believed that the new plan should satisfy the court and prosecutors, calling it the equivalent of "Spandau in Muttontown," a reference to the Allied prison in Germany where Nazi war criminals were held after World War II.

Slavery case couple hire new lawyers

Newsday
June 9, 2007

By ROBERT E. KESSLER

Maybe the third set of lawyers will be the charm, at least in getting them released on bail.

A wealthy Muttontown couple accused of slavery fired most of their second set of lawyers without explanation Friday.

Replacing their second set of lead attorneys, the couple, Varsha Sabhnani and her husband, Mahender, now will be represented by two well-known criminal defense attorneys at their next bail hearing set for Monday in federal court in Central Islip.

Stephen Scaring of Garden City was hired to head Mahender Sabhnani's defense, and Jeffrey Hoffman of Manhattan, Varsha's. Hoffman previously had been one of the lawyers on the team representing Varsha Sabhnani, but did not play a prominent role.

Wednesday, the Sabhnanis fired all the lawyers who had originally represented them except for Hoffman, just before a bail hearing set for that day.

Varsha Sabhani's new lead attorney that day, Sumeet Sondhi, clashed with U.S. District Judge Thomas Platt, who told Sondhi to sit down or he would have him removed from the room.

Sondhi and Oscar Michelen, Mahender Sabhani's second lawyer, were fired Friday.

Both Scaring and Hoffman said Friday they believe they have conditions to propose that have a good chance of convincing Platt to release the Sabhnanis to home detention.

Assistant U.S. attorneys Mark Lesko and Demetri Jones have opposed releasing the couple who were arrested May 15 on charges of enslaving two Indonesian women. Platt has said he would consider releasing the Sabhnanis on bail to home detention, but has also said prosecutors would have to agree to the conditions.

EXHIBIT J

Judge rejects bail application in Long Island slavery case

Associated Press

June 11, 2007

By FRANK ELTMAN

A federal judge on Monday refused to grant bail to a couple accused of keeping two Indonesian women as slaves in their mansion for five years, finding that no conditions would be suitable to allow the millionaires to remain under house arrest until their trial.

Last month, U.S. District Court Judge Thomas Platt indicated he might be willing to allow Varsha Mahender Sabhnani, 35, and her husband, Mahender Murlidhar Sabhnani, 51, to be freed on $3.5 million bail if a set of conditions of house arrest could be agreed to by prosecutors and the defense team.

The judge held several hearings at which the parameters of the couple's release on bail were discussed, but ultimately he found that because the Sabhnanis present a "risk of flight, no such conditions or combination of conditions would adequately assure the presence of the defendants" at future court dates.

The Sabhnanis – she's from Indonesia, he's from India – had no visible reaction to the judge's ruling, but their attorneys said they intended to appeal.

Jeffrey Hoffman, who represents Varsha Sabhnani, said he was surprised by the judge's decision. "This couple unquestionably deserves bail," he told reporters outside the courtroom.

The Sabhnanis, both U.S. citizens, have pleaded not guilty to a federal court indictment accusing them of slavery and harboring undocumented citizens in their Muttontown mansion. Their trial is set for Sept. 10.

They were arrested May 13 after one of the Indonesian women was found wandering outside a doughnut shop not far from the couple's home, muttering that she had been injured and wanted to return to her native country. The woman apparently had escaped the night before while putting out the trash, prosecutors said.

The second woman was found when Immigration and Customs Enforcement agents searched the couple's home later that day.

Both told prosecutors they had been mentally and physically abused and were paid virtually nothing for the services as domestic servants.

The Sabhnanis, in their bid for bail, had offered to turn their home into a virtual prison, agreeing to have security officers monitor the entrances to the home and have restrictions on their telephones and Internet access. They also would have been subjected to electronic monitoring and would have been permitted to leave the home only for doctor's appointments or to see their lawyers.

The security detail, which would have been financed entirely by the couple, was estimated at $15,000 a day.

Stephen Scaring, a high-profile Long Island defense attorney who took over as Mahender Sabhnani's lawyer on Monday, said his client was disappointed but looked forward to being vindicated at trial.

"This case is long on spin and short on truth," he said.

Defense attorneys previously said that the Sabhnanis, who operated a worldwide perfume business out of their mansion, frequently traveled for weeks at a time and the two Indonesian women could have left the Muttontown home whenever they wanted.

Judge orders slavery couple held without bail

Newsday

June 12, 2007

By ROBERT E. KESSLER

A federal judge late yesterday ordered a wealthy Muttontown couple accused of slavery held without bail pending trial, labeling efforts to have them released to home detention a "futile attempt."

Unless the couple, Varsha Sabhnani and her husband, Mahender, a perfume manufacturer and distributer, get the decision reversed in an almost certain appeal, they face confinement in a federal detention center until their trial is scheduled to start in September.

The couple is charged with enslaving two Indonesian women they hired as housekeepers.

In his ruling in federal court in Central Islip, Senior U.S. District Court Judge Thomas Platt said he attributed the unsuccessful attempt over the past several weeks to turn the couple's home into a prison to defense attorneys' failure to work out a plan acceptable to federal prosecutors.

When defense attorneys attempted to protest his decision, Platt replied, "I'm not going to hear further arguments."

Platt suggested that defense attorneys appeal his decision to the Court of Appeals in Manhattan. Var-

sha Sabhnani's attorney, Jeffrey Hoffman, said the Sabhnanis would do so immediately.

Federal prosecutors Mark Lesko and Demetri Jones, who have continually opposed any conditions for the release of the couple, declined to comment.

The Sabhnanis showed no emotion when the judge announced his decision.

The Sabhnanis had offered to pay at least $15,000 a day to have several guards around-the-clock at their home, among other stringent security measures, as well as posting a total of $3.5 million in bail.

In an 18-page opinion released after the hearing, Platt noted that in reaching his decision, he was troubled by the Sabhnanis' initial failure to adequately disclose their finances and then to sufficiently clarify the situation when the government questioned whether the couple had been totally honest in their statements about their total assets and their possible location overseas.

Substantial finances overseas presumably could be used to support the couple if they fled.

"These discrepancies, as the government argues, paint a picture of non-disclosure, which leaves the government and this court alike with an inaccurate and untrustworthy pictures of defendants' finances," Platt wrote. "While the defendants have attempted to explain these inaccuracies, this court finds no solace or security in the defendants' explanations, all of which include sending the government on a fishing expedition through the defendants' lengthy financial records."

'Platt said that in arriving at his ruling, he also found that the Sabhnanis' actions might indicate that they are capable of "deceit" and "dishonesty."

Platt said he was referring to prosecutors' allegations that the Sabhnanis had ordered the alleged victims to hide when visitors came to the house, indicating that the couple may have "secreted conduct from their friends, neighbors and the public alike."

Afterward, Hoffman said, "I'm surprised at what the judge said."

Hoffman and other defense attorneys have said they were under the impression that, based on their previous interpretation of Platt's comments, the judge favored releasing the couple. They have been held in prison for almost a month since their arrest May 15, and they have run through three sets of lawyers during several bail hearings.

In court papers, Hoffman had said he believed Platt would work out conditions for the release of the Sabhnanis if prosecutors and defense attorneys could not arrive at an amicable agreement.

The Sabhnanis theoretically face up to 50 years in prison if convicted of the slavery charges and additional charges of harboring fugitive aliens.

Slave case couple asks for judge's removal

Newsday

June 15, 2007

By ROBERT E. KESSLER

Attorneys for a Muttontown couple accused of enslaving two Indonesian women Friday asked that the federal judge who has refused to release the couple on bail be replaced, contending that he has a repeated history of siding with prosecutors.

Attorneys for the couple, Varsha Sabhnani and her husband, Mahender, also said the alleged victims might have a motivation to lie about their supposed mistreatment by the couple.

The claims by attorneys Jeffrey Hoffman, Stephen Scaring and Susan Wolfe were in a legal brief filed with the Second Circuit Court of Appeals in Manhattan, which also asked that the decision earlier this week by Senior U.S District Judge Thomas Platt to deny bail be overturned.

The attorneys said in the brief that Platt has been found, as a previous appellate court ruling has said, to have "a willingness to rubber stamp any suggestion made by the United States Attorney."

In the Sabhnani case, the attorneys argued, Platt had favored prosecutors by going back on his word that he would work out a plan to release the couple to home detention if defense attorneys and federal prosecutors could not arrive at one themselves. Pros-

ecutors have said they would not agree to any conditions to have the Sabhnanis released on bail.

On Monday in U.S. District Court in Central Islip, Platt ruled that he was denying the couple bail because he believed that they had not been forthcoming in disclosing their finances and that they might be capable of deceit.

The Sabhanis had said they were willing to put up a $3.5 million in bail and spend as much as $15,000-a-day to turn their Muttontown mansion into the equivalent of a jail, guarded around the clock by monitors chosen by prosecutors.

As for the motivation of the two Indonesian women in claiming they had been enslaved and tortured, the defense attorneys wrote that at a trial, "The time-honored truth-telling test of cross-examination will reveal whether their allegations are an attempt to further improve their lots [they have overstayed their visas) by aligning themselves with the United States Government against employers, they may well have perceived as unduly privileged."

"The defense anticipates the testimony of numerous witnesses, other than family members, who have been in the home over the years and have not observed the Sabhnanis' employees in any kind of distress," Hoffman and Wolfe wrote.

Assistant U.S. Attorney Demetri Jones, who is prosecuting the case along with Assistant U.S. Attorney Mark Lesko, said the two were reviewing the Sabhnanis brief, but declined futher comment.

Judge Platt declined comment.

'Slave' suspects appeal bail denial

Newsday

June 15, 2007

By ROBERT E. KESSLER

Continuing their attempt to get out of jail on bail, an affluent Muttontown couple filed an appeal yesterday of a court ruling ordering them held pending their September trial on slavery charges.

The couple, Varsha Sabhnani and her husband, Mahender, who operate a perfume business from their home, were denied bail Monday by U.S. District Court Judge Thomas Platt in Central Islip after several hearings since their May 15 arrest on charges of enslaving two Indonesian women they hired as housekeepers.

Platt ruled that bail was a risk because the couple might flee. His ruling came despite the couple's willingness to put up $3.5 million in bail and spend $15,000 a day to turn their mansion into the equivalent of a prison.

The Sabhnanis requested that Platt's bail decision be overturned in a letter to the Court of Appeals for the Second Circuit in Manhattan. Such an appeal request typically is followed by legal briefs filed by defense attorneys and responses by federal prosecutors. Prosecutors have said they opposed any conditions for the Sabhnanis' release on bail.

Mahender Sabhnani's attorney, Stephen Scaring, declined to comment, as did federal prosecutors Demetri Jones and Mark Lesko. Varsha Sabhnani's attorney, Jeffrey Hoffman, could not be immediately reached.

'Slave' defense knocks judge

Newsday

June 16, 2007

By ROBERT E. KESSLER

Attorneys for a Muttontown couple accused of enslaving two Indonesian women Friday asked that the federal judge who has refused to release the couple on bail be replaced, contending that he has a repeated history of siding with prosecutors.

Attorneys for the couple, Varsha Sabhnani and her husband, Mahender, also said the alleged victims might have a motivation to lie about their supposed mistreatment by the couple.

The claims by attorneys Jeffrey Hoffman, Stephen Scaring and Susan Wolfe were in a legal brief filed with the Second Circuit Court of Appeals in Manhattan, which also asked that the decision earlier this week by Senior U.S. District Judge Thomas Platt to deny bail be overturned.

The attorneys said in the brief that Platt has been found, as a previous appellate court ruling has said, to have "a willingness to rubber-stamp any suggestion made by the United States attorney."

In the Sabhnani case, the attorneys argued, Platt had favored prosecutors by going back on his word that he would work out a plan to release the couple to home detention if defense attorneys and federal prosecutors could not arrive at one themselves. Pros-

ecutors have said they would not agree to any conditions to have the Sabhnanis released on bail.

On Monday in U.S. District Court in Central Islip, Platt ruled that he was denying the couple bail because he believed that they had not been forthcoming in disclosing their finances and that they might be capable of deceit.

The Sabhnanis had said they were willing to put up $3.5 million in bail and spend as much as $15,000 a day to turn their Muttontown mansion into the equivalent of a jail, guarded around the clock by monitors chosen by prosecutors.

As for the motivation of the two Indonesian women in claiming they had been enslaved and tortured, the defense attorneys wrote that at a trial, "The time-honored truth-telling test of cross-examination will reveal whether their allegations are an attempt to further improve their lots by aligning themselves with the United States government against employers they may well have perceived as unduly privileged." The two had overstayed their visas.

"The defense anticipates the testimony of numerous witnesses, other than family members, who have been in the home over the years and have not observed the Sabhnanis' employees in any kind of distress," Hoffman and Wolfe wrote.

Assistant U.S. Attorney Demetri Jones, who is prosecuting the case along with Assistant U.S. Attorney Mark Lesko, said the two were reviewing the Sabhnanis brief, but declined further comment.

Platt declined comment.

Appeals court could allow accused LI slaveholders free on bail

Newsday (Associated Press)

June 26, 2007

A wealthy couple accused of keeping two Indonesian housekeepers as slaves in their Long Island mansion for several years won a legal battle Tuesday when an appeals court said the couple should be eligible for bail before their trial.

A three-judge 2nd U.S. Circuit Court of Appeals panel in Manhattan said that Varsha Mahender Sabhnani, 35, and Mahender Murlidhar Sabhnani, 51, are entitled to bail while they await trial on a federal charges accusing them of slavery and harboring undocumented citizens.

The Sabhnanis were arrested in May after one of the housekeepers was found wandering outside a doughnut shop near their home, muttering that she had been injured and wanted to return to her native country. The woman apparently had fled the Sabhnanis' Muttontown mansion the night before while putting out the trash, prosecutors said.

The second woman was found when Immigration and Customs Enforcement agents searched the home later that day. Both women told prosecutors they had been mentally and physically abused and were paid almost nothing for the services as domestic servants since 2002.

Since their arrest, the Sabhnanis have been stymied in their attempts to get out on bail. Both are

U.S. citizens who had their passports confiscated after their arrest. But prosecutors fear the couple have relatives overseas who could provide a safe haven if they flee; she is from Indonesia and he is from India.

U.S. District Court Judge Thomas Platt initially indicated he might release the couple on $3.5 million bail if attorneys could agree on conditions of house arrest, such as $15,000- a-day security detail monitoring entrances to their home, and restrictions on phone and Internet access.

Despite the conditions, Platt ultimately found the Sabhnanis presented a flight risk and denied bail. "No such conditions or combination of conditions would adequately assure the presence of the defendants" at future court dates, Platt said.

On Tuesday, the Court of Appeals overruled Platt and set a Wednesday deadline for prosecutors to submit a set of bail conditions suitable to prevent the Sabhnanis from fleeing.

Prosecutors and defense attorneys declined to comment on the decision. A trial date has not been set, but is not, expected to begin before the fall.

Court: Bail for Couple Accused of Slaves

Associated Press

June 26, 2007

A couple accused of keeping two Indonesian housekeepers as slaves in their mansion for several years should be eligible for bail before their trial, an appeals court ruled Tuesday.

A three-judge panel for the 2nd U.S. Circuit Court of Appeals in Manhattan said Varsha Mahender Sabhnani, 35, and Mahender Murlidhar Sabhnani, 51, are entitled to bail while they await trial on federal charges of slavery and harboring undocumented citizens.

The Sabhnanis were arrested in May after one of the housekeepers was found wandering outside a doughnut shop near their Long Island home. The second woman was found when Immigration and Customs Enforcement agents searched the home later that day.

Both women told prosecutors they had been mentally and physically abused and were paid almost nothing for their work since 2002.

U.S. District Judge Thomas Platt denied bail despite proposed release conditions that included house arrest with $15,000-a-day security detail monitoring entrances to their home.

The Court of Appeals set a Wednesday deadline for prosecutors to submit bail conditions that adequately prevent the Sabhnanis from fleeing.

Prosecutors and defense attorneys declined to comment on the decision. A trial date has not been set.

Court: Bail for Couple Accused of Slaves

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June 26, 2007

A couple accused of keeping two Indonesian housekeepers as slaves in their mansion for several years should be eligible for bail before their trial, an appeals court ruled Tuesday.

A three-judge panel for the 2nd U.S. Circuit Court of Appeals in Manhattan said Varsha Mahender Sabhnani, 35, and Mahender Murlidhar Sabhnani, 51, are entitled to bail while they await trial on federal charges of slavery and harboring undocumented citizens.

The Sabhnanis were arrested in May after one of the housekeepers was found wandering outside a doughnut shop near their Long Island home. The second woman was found when Immigration and Customs Enforcement agents searched the home later that day.

Both women told prosecutors they had been mentally and physically abused and were paid almost nothing for their work since 2002.

U.S. District Judge Thomas Platt denied bail despite proposed release conditions that included house arrest with $15,000-a-day security detail monitoring entrances to their home.

The Court of Appeals set a Wednesday deadline for prosecutors to submit bail conditions that adequately prevent the Sabhnanis from fleeing.

Prosecutors and defense attorneys declined to comment on the decision. A trial date has not been set.

Step toward bail in LI slave case

Newsday

June 26, 2007

By ROBERT E. KESSLER

A wealthy Muttontown couple accused of enslaving two housekeepers may be getting out of a federal jail on bail shortly.

But the couple, Varsha and Mahender Sabhnani, who have been imprisoned for six weeks, would then have to go directly to their home, which would be turned into the equivalent of a prison that would satsify prosecutors, according to a three-judge federal appellate panel.

The decision of the three judges – Jose Cabranes, Reena Raggi, and Ralph Winter – sitting in the Second Circuit Court of Appeals in Manhattan, said there was a legal presumption that the Subhnanis were entitled to bail while they awaited trial, and they already had agreed to home detention conditions that the judges termed "extraordinary."

The panel yesterday ordered federal prosecutors to come up with conditions by today that would permit the couple to be confined to their home and would make them unlikely to flee the country. The couple had appealed a ruling by U.S. District Judge Thomas Platt in Central Islip. He had agreed with prosecutors that no conditions would assure that the couple would not flee overseas.

But Judge Raggi said the government had been "showing a lack of imagination" in ruling out a set of requirements.

Mrs. Sabhnani's attorneys, Jeffrey Hoffman and Susan Wolff, of Manhattan, declined to comment after the hearing, as did Mr. Sabhnani's attorney, Steven Scaring, of Garden City. Federal prosecutors Susan Corkery and Mark Lesko also declined to comment.

The Sabhnanis had said they would be willing to put up bail totaling $3.5 million and pay thousands of dollars a day to have their mansion, at 205 Coachman Place East, turned into what amounted to a jail, guarded around the clock by two monitors from a firm approved by the government. The prosecutors argued that the Sabhnanis might have undisclosed assests overseas which they could use if they fled.

One hitch in the possible release may be looming: cost. Defense attorneys for the Sabhnanis also argued in court yesterday that the cost of home detention was becoming "very expensive" and that one monitor may be sufficient instead of the two in the original plan, indicating that the price may be becoming too prohibitive for the Subhnanis to afford.

Defense attorneys also had asked in their appeal that Platt be removed from the case and replaced by another judge because he was prejudiced against the defendants. But neither defense attorneys nor prosecutors were asked yesterday by the appellate judges to discuss that question, leaving its eventual resolution uncertain.

Lawyers: Slavery couple a flight risk

Newsday

June 26, 2007

By ROBERT E. KESSLER

Federal prosecutors urged an appeals court yesterday to keep a Muttontown couple accused of slavery in jail pending trial, saying they were a flight risk.

The prosecutors argued that the appeals court should not overturn a ruling by Judge Thomas Platt in U.S. District Court denying the couple release on bail, and that the higher court should not replace Platt despite defense claims that he has a history of favoring prosecutors over defendants.

The prosecutors' arguments came on the eve of a hearing scheduled today in the U.S. Court of Appeals for the Second Circuit in Manhattan brought by defense attorneys for the couple, Mahender Sabhnani, a perfume manufacturer and distributor, and his wife, Varsha. The two have been in jail since May 14 when they were arrested on charges of enslaving and torturing two Indonesian women they had hired as housekeepers.

Defense attorneys for the Sabhnanis contend that the couple were unfairly being denied release on home detention, although they were not a flight risk, and that they were willing to put up a total of $3.5 million in bail and spend $15,000 a day to turn their

mansion into the equivalent of an around-the-clock prison.

Further, the defense attorneys argued that Platt should be replaced because he had been found in a previous appeals court decision to have "a willingness to rubber-stamp any suggestion made by the United States attorney."

Far from being a rubber stamp for the government, the prosecutors said, Platt based his Sabhnani decision clearly on his finding that they had not been forthcoming about their possible assets overseas, which they could use if they fled. The judge also noted that the couple could easily re-establish their perfume business in the Middle East, where they sell most of their fragrances and where few nations have extradition treaties with the United States.

Millionaire slaveholders may be freed on bail

Associated Press

June 26, 2007

A wealthy couple accused of keeping two Indonesian housekeepers as slaves in their Long Island mansion for several years won a legal battle Tuesday when an appeals court said the couple should be eligible for bail before their trial.

A three-judge 2nd U.S. Circuit Court of Appeals panel in Manhattan said that Varsha Mahender Sabhnani, 35, and Mahender Murlidhar Sabhnani, 51, are entitled to bail while they await trial on a federal charges accusing them of slavery and harboring undocumented citizens.

The Sabhnanis were arrested in May after one of the housekeepers was found wandering outside a doughnut shop near their home, muttering that she had been injured and wanted to return to her native country. The woman apparently had fled the Sabhnanis' Muttontown mansion the night before while putting out the trash, prosecutors said.

The second woman was found when Immigration and Customs Enforcement agents searched the home later that day. Both women told prosecutors they had been mentally and physically abused and were paid almost nothing for the services as domestic servants since 2002.

Since their arrest, the Sabhnanis have been stymied in their attempts to get out on bail. Both are U.S. citizens who had their passports confiscated af-

ter their arrest. But prosecutors fear the couple have relatives overseas who could provide a safe haven if they flee; she is from Indonesia and he is from India.

U.S. District Court Judge Thomas Platt initially indicated he might release the couple on $3.5 million bail if attorneys could agree on conditions of house arrest, such as $15,000-a-day security detail monitoring entrances to their home, and restrictions on phone and Internet access.

Despite the conditions, Platt ultimately found the Sabhnanis presented a flight risk and denied bail. "No such conditions or combination of conditions would adequately assure the presence of the defendants" at future court dates, Platt said.

On Tuesday, the Court of Appeals overruled Platt and set a Wednesday deadline for prosecutors to submit a set of bail conditions suitable to prevent the Sabhnanis from fleeing.

Prosecutors and defense attorneys declined to comment on the decision. A trial date has not been set, but is not expected to begin before the fall.

Appeal set in slave case

Newsday

June 26, 2007

By ROBERT E. KESSLER

A federal appeals court in Manhattan is scheduled to hear arguments Tuesday that a wealthy Muttontown couple accused of slavery should be released on bail and that the judge overseeing their case should be replaced.

The couple, Mahender Sabhnani and his wife, Varsha, filed the appeal after Senior U.S. District Judge Thomas Platt in Central Islip refused to release them to home detention. They say Platt has a history of ruling in favor of federal prosecutors.

Slavery case couple to be granted bail

Associated Press

June 27, 2007

The Muttontown couple accused of keeping two Indonesian housekeepers as slaves in their mansion should be eligible for bail, an appeals court ruled yesterday.

A three-judge 2nd U.S. Circuit Court of Appeals panel in Manhattan said that Varsha Mahender Sabhnani, 35, and Mahender Murlidhar Sabhnani, 51, are entitled to bail while they await trial on federal charges accusing them of slavery and harboring undocumented citizens.

The Sabhnanis were arrested in May after one of the housekeepers was found wandering outside a doughnut shop near the couple's home, muttering that she had been hurt and wanted to return to her native country.

The woman apparently had fled the Sabhnanis' Muttontown mansion the night before while putting out the trash, prosecutors said.

The second woman was found when Immigration and Customs Enforcement agents searched the home later that day.

Both women told prosecutors they had been mentally and physically abused, and were paid almost nothing for the services as domestic workers since 2002.

Since their arrest, the Sabhnanis have been stymied in their attempts to get out on bail.

She is from Indonesia and he is from India; both are U.S. citizens. Their passports were confiscated after their arrests, but prosecutors fear the couple have relatives overseas who could provide a safe haven if they were to flee.

Judge Thomas Platt in West Islip Federal Court initially indicated he might release the couple on $3.5 million bail if attorneys could agree on conditions of house arrest, such as $15,000-a-day security detail monitoring entrances to their home, and restrictions on phone and Internet access.

Despite the conditions, Platt ultimately found the Sabhnanis presented a flight risk and denied bail.

"No such conditions or combination of conditions would adequately assure the presence of the defendants" at future court dates, Platt said.

Yesterday, the Court of Appeals overruled Platt and ordered prosecutors to submit by today a set of bail conditions suitable to prevent the Sabhnanis from fleeing.

Prosecutors and defense attorneys declined to comment on the decision. A trial date has not been set, but it is not expected to begin before the fall.

Ruling calls for bail deal

Newsday

June 27, 2007

By ROBERT E. KESSLER

A wealthy Muttontown couple accused of enslaving two housekeepers may be getting out of a federal jail on bail shortly.

But the couple, Varsha and Mahender Sabhnani, who have been imprisoned for six weeks, would then go directly to their home, which would be turned into the equivalent of a prison that would satisfy prosecutors, according to a three-judge federal appellate panel.

The decision of the three judges - Jose Cabranes, Reena Raggi and Ralph Winter - sitting in the Second Circuit Court of Appeals in Manhattan, said there was a legal presumption that the Sabhnanis were entitled to bail while they awaited trial, and they already had agreed to home detention conditions that the judges termed "extraordinary."

The panel yesterday ordered federal prosecutors to come up with conditions by today that would permit the couple to be confined to their home and would make them unlikely to flee the country.

The couple had appealed a ruling by U.S. District Judge Thomas Platt in Central Islip. He had agreed with prosecutors that no conditions would assure that the couple would not flee overseas.

But Judge Raggi said the government had been "showing a lack of imagination" in ruling out a set of requirements. Varsha Sabhnani's attorneys, Jeffrey Hoffman and Susan Wolff, of Manhattan, declined to comment after the hearing, as did her husband's attorney, Steven Scaring, of Garden City. Prosecutors Susan Corkery and Mark Lesko also declined to comment.

The Sabhnanis had said they would be willing to put up bail totaling $3.5 million and pay thousands of dollars a day to have their mansion, at 205 Coachman Place E., turned into what amounted to a jail, guarded around the clock by two monitors from a firm approved by the government.

One hitch in the possible release may be looming: cost. Defense attorneys for the Sabhnanis also argued in court yesterday that the cost of home detention was becoming "very expensive" and that one monitor may be sufficient instead of the two in the original plan, indicating that the price may be becoming too prohibitive for the Sabhnanis to afford.

Prosecutors: Bail should mean armed guards in LI slave case

Newsday (Associated Press)

June 28, 2007

Prosecutors are calling for armed guards to keep tabs on a wealthy couple accused of enslaving two Indonesian housekeepers, if the two are released on bail.

Prosecutors have opposed bail for Varsha Mahender Sabhnani and her husband, Mahender Murlidhar Sabhnani, citing fears that the millionaire Long Island couple might leave the country.

But an appeals court said Tuesday that the Sabhnanis were entitled to bail while awaiting trial on a federal charges of slavery and harboring undocumented citizens. The couple has agreed to pay a total of $3.5 million in bail and a potential $15,000 a day for electronic monitoring and 24-hour surveillance for their Muttontown mansion.

The court told prosecutors to specify additional bail conditions they would consider suitable to prevent the Sabhnanis from fleeing.

To assistant U.S. Attorney Mark Lesko, those conditions include constant oversight by guards armed and authorized to use "reasonable force" if the Sabhnanis or their daughters show signs of fleeing. The Sabhnanis are U.S. citizens, and their passports were confiscated after their arrest in May. But prosecutors fear the two have relatives overseas who could provide a safe haven if they fled. Varsha Sabh-

nani, 35, is from Indonesia; her husband, 51, is from India.

Prosecutors also said in court documents Wednesday that they wanted an accounting monitor to keep watch over the Sabhnanis' finances, and prosecutors proposed to boost Mahender Sabhnani's bail from $1 million to $2 million.

Meanwhile, the Sabhnanis' lawyers submitted new suggestions of their own. Varsha Sabhnani's lawyer, Susan Wolfe, said in court papers that a security firm had suggested it might not need three monitors as had been proposed to keep track of the couple.

It was unclear when the appeals court might rule on the proposals.

The Sabhnanis' former housekeepers have told authorities they were mentally and physically abused and paid almost nothing for their services. The Sabhnanis' lawyers have denied that the workers were abused or held against their will.

U.S. District Court Judge Thomas Platt initially indicated he might release the couple on $3.5 million bail if attorneys could agree on conditions of house arrest, but he later denied bail after concluding the Sabhnanis posed a flight risk. He was overruled by the Court of Appeals.

Feds: Armed guards should watch accused slaveholders

Newsday

June 28, 2007

By ROBERT E. KESSLER

Federal prosecutors said Wednesday that if the Muttontown couple accused of slavery is released from jail to home detention, they should be monitored by armed guards with the power to forcibly detain them, as well as their three daughters, if there is any sign that the family might try to flee the country.

The recommendation of armed guards, as opposed to passive monitors, is one of the new restrictions that prosecutors would like to add to the conditions that the couple, Varsha Sabhnani and her husband, Mahender, already have agreed to if they are permitted to await trial in home detention. The couple is charged with enslaving and torturing two Indonesian women they hired as housekeepers.

In addition to the armed guards, the prosecutors suggested conditions that would steeply raise the cost of home detention. The couple has already agreed to pay $3.5 million in bail and what could amount to $15,000 a day to turn their home at 205 Coachman Place E. into the equivalent of a jail.

The prosecutors' recommendations came in response to a three-judge federal panel Monday in Manhattan. The panel ordered Justice Department

officials to come up with a set of conditions to ensure that the Sabhnanis would not flee. The judges said the Sabhnanis, who manufacture and distribute perfume, were entitled to bail while awaiting trial.

The Sabhnanis' attorneys countered with a proposal that could eventually cost the Sabhnanis less money than they had already had agreed to pay. Susan Wolfe, an attorney for Mrs. Sabhnani, said in court papers that after assessing the initial situation of the Sabhnanis in home detention, the security firm, Stroz Friedberg of Manhattan, said it might not need to employ all three of the monitors.

Prosecutors asked also for an accounting monitor to oversee the Sabhnanis' finances, more information on the couple's financial dealings, and an increase on Mr. Sabhnani's bail from $1 million to $2 million.

Assistant U.S. Attorney Mark Lesko wrote that the defendants and their daughters should consent to the use of "reasonable force" if Stroz employees determine they are attempting to flee. It is uncertain when the appellate panel will rule on which proposal to accept or whether to modify them.

EXHIBIT K

1) May 15, 2007, the day after the arrest, article in the Daily News titled "L.I. Slavery Evidence,"

– publishing photographs obtained from the government:

1) a photo of a Jane Doe laying on a mat "that served as a bed for one of two Indonesian women allegedly kept as slaves by Mahender and Varsha Sabhnani;"

2) photograph of the back of Jane Doe, "Varsha Sabhnani allegedly beat one of the women;"

3) photo of a drawer with a rolling pin, "with a knife, rolling pin and broomstick;"

4) photo of an arm hooked up to an intravenous with marks on it, "If one of the women, identified only as Samirah, was considered 'disobedient," she was scalded with hot water or forced to eat hot peppers;"

5) photo of scabs on the back of an ear;

6) photo of woman knelling in closet, "was made to sleep in a closet in her bedroom;"

2) May 16, 2007, New York Times, "Couple Held Two Servants Captive for Years, U.S. Says,"

– "keeping tow Indonesian domestic workers as virtual prisoners in their home for more than five years under conditions called 'modern-day slavery,' beating one severely and paying them very little;"

– Sabhnani's run a multimillion dollar perfume business

3) May 16, 2007, New York Post, "Cruel L.I. Slave Masters,"

– "A 'monstrous' millionaire from Long Island's Gold Coast kept two Indonesian women as slaves for five years in their tony estate-turned-house of horrors — until one victim was found wandering the street half-naked this week muttering "Master, authorities said;"

– describing the Sabhnani's as "perfume moguls from the mega-rich community of Muttontown,"

– brought to court for committing "Incomprehensible . . . inhumanity;"

– authorities said she was less than a mile away from "her hell on earth; an antiques-stuffed, cedar-shakers mansion where she was beaten with brooms and rolling pins, repeatedly sliced on the ears with a paring knife, starved and forced to sleep on the kitchen floor;"

– Varsha "was the main torturer who doled out the horrific punishment while her husband, 51, watched;"

– "Varsha's cruelty included forcing Samirah to take as many as 30 ice-cold showers in a row, run up and down a flight of stairs 150 times as fast as she could and gulp down at least 25 'extremely hot chili peppers at one time;"

– AUSA Jones described the conduct as "monstrous," "truly a case of modern-day slavery;"

– elaborate description of the "sprawling, two-story manse in one of New York's most exclusive enclaves;"

– "their new bosses ran a multi-million-dollar business from home, peddling Royal Mirage perfume throughout the world;"

– "But if the victims — ages 51 and 46 — had dreams of partaking in even a smidgen of their employer's good life, they were sorely mistaken, officials said;" [class bias];

– "they began working 21-hour days ... allowed to sleep for the remaining three hours . . . on thin, 3-by-6 mats on the floor of one of the home's two kitchens;" beatings were routinely administered;"

– "Samirah said Varsha also tossed scalded water on her;"

– "Samirah also showed cops at the house 'a door stained with [her] blood [from] a beating;"

– "Nona told authorities she was once forced to strip naked and take as many as

– 10 icy showers in a row;"

– At the Dunkin Donuts, Samirah "said the word, 'Master,' then she made a motion like she was getting slapped **[hearsay]**

4) May 17, 2007, "Slave Flick A Hit With Cruella JR," feds probing whether millionaire couple accused of enslaving and torturing tow Indonesian women . . .were aided by their four kids — including their eldest shopaholic daughter, who says her favorite movies include 'Human Trafficking,' a gritty sex-slave drama" (taken from the Friendster.com website), a movie that "reveals the brutal torture of young women kidnapped, drugged, raped and sold into sex slavery," "she says she love shopping;" "Prosecutors say Varsha inflicted 'Cruella de Vil' punishment" (repeating allegations in detail)

5) May 18, 2007, New York Times, reporting on bail set

6) May 18, 2007, New York Post, "$3.5M Bail For Cruella and Hubby" — "Long Island couple accused of ruthlessly imprisoning a pair of immigrant servants now vases the prospect of home detention themselves;" "Her husband, who authorities say stood idly by as the immigrant Muslims were exploited, beaten and starved;" **[injecting religious persecution]**

7) May 19, 2007, New York Post, "Cruella Girls Have Faith,"

> – "The women kept as slaves by a wealthy Long Island couple are happy they can now practice their Muslim religion freely after years of ridicule in captivity;"

– "Indonesian Consul General . . . said she ordered Korans and special prayer clothes for 'Samirah' and 'Nona';

– "According to prosecutors, the house mistress told her two domestic servants that their God was s—t and that "My God is better;"

8) May 20, 2007, New York Times. "Slaves of Long Island,"

– "horrifying story of exploitation and cruelty"

– "serious need for New York State to crack down on the trafficking of people for sex and labor"

– "According to federal prosecutors, a wealthy couple ... kept two Indonesian women in virtual slavery for years, paying them a pittance for long hours of domestic labor punctuated with sickening abuses";

– "couple . . . who run a multimillion-dollar perfume business ... are said to have given the women little food and forced them to sleep on mats on the floor"

– "Mrs. Sabhnani . . . often beat one of the women with a stick, scalded her, cut her ears with a knife and burned her with cigarettes and scalding water" [and] forced her victim to choke down hot chili peppers"

9) May 20, 2007, New York Times, "Slaves of New York

– "New York City and its wealthy suburbs are full of desperate immigrants who suffer greatly at the hands of abusive employers

– laws needed; "horrifying story of exploitation and cruelty"

10) May 24, 2007, New York Times, "2 Indicted on Slave Charge,"

11) May 25, 2007, New York Times, "New Accusations in Slavery Case"

– "Prosecutors said Ms. Sabhnani's mother, who lives in Indonesia, tried to bribe one victim's son-in-law with $2,500;" "threatened to have the other victim's husband, also in Indonesia, arrested if the woman did not obey her."

12) May 31, 2007, New York Post, "Slave 'Slay Threat'

– "Son of a slave brutalized by a millionaire Long Island couple was told he'd have to pay $4,500 to get his mom home"

– "Son said . . . Varsha's mother offered him $28,000 if the victim would leave the United States and not cooperate with the prosecution;"

– "Despite the horrific charges of 'inhumane' brutality against their servants, Judge Platt ruled "they can await trial in their luxurious estate;"

– mansion "features an in-ground lagoon pool with waterfall and built-in stainless steel barbecue area"

13) June 4, 2007, Newsday, "Judge Rips Detention Plan in Slavery Case"

– Quoting Judge, "You're going to have to make it a jail, not a country club"

– Detailed description of proceedings

14) June 6, 2007, Newsday, "New Plan for Couple to Do Time At Home"

– detailed description of proposed bail conditions, costing "$15,000 a day"

15) June 7, 2007, Newsday, "No Bail Yet For Couple Accused In Slave Case"

– detailed coverage of court proceedings re bail

16) June 9, 2007, Newsday, "Slavery Vase Couple Hires New Lawyers"

– detailing replacement of attorneys, "maybe third set of lawyers will be a charm"

17) June 11, 2007, Associated Press, "Judge Rejects Bail Application in Long Island Slavery Case"

– detailed description of bail proceedings

18) June 12, 2007, Newsday, "Judge Orders Slavery Couple Held Without Bail"

– quoting the court's decision regarding evidence "indicating that the couple may have 'secreted conduct from their friends, neighbors and the public alike"

19) June 15, 2007, Newsday, "Slave Couple Asks for Judge's Removal"

– detailing appeal submission

20) June 15, 2007, Newsday, "'Slave' Suspects Appeal Bail Denial"

21) June 16, 2007, Newsday, "'Slave' Defense Knocks Judge"

– summarizing defense appeal submission

22) June 26, 2007, Associate Press/Newsday, 1) "Appeals Court Could Allow Accused LI Slaveholders Free on Bail;"

– describing appellate argument and the charges

23) June 26, 2007, AM New York online, "Court: Bail for Couple Accused of Slaves"

24) June 26, 2007, Newsday, "Step Toward Bail In LI Slave Case"

25) June 26, 2007, Newsday, "Slavery Couple a Flight Risk"

26) June 26, 2007, NY Daily News, "Millionaire Slaveholders May Be Freed on Bail"

27) June 27, 2007, NY Daily News, "Slavery Case Couple to Be Granted Bail"

28) June 27, 2007, Newsday, "Ruling Calls for Bail Deal"

29) June 28, 2007, Newsday, "Prosecutors: Bail Should Mean Armed Guards in LI Slave Case"

– detailing Government submission re additional conditions, including increase to $2 Million for Mr. Sabhnani and armed guards with authority to use force against Sabhnanis and their daughter

30) June 28, 2007, Newsday, "Armed Guards Should Watch Accused Slaveholders"

EXHIBIT L

Radio/TV Coverage

1) May 17, 2007, WABC-TV, abclocal.go.com, Eyewitness News, "Bail set for LI couple accused of keeping slaves; Police: Worse case they've ever seen"

2) May 24, 2007, WABC-TV, abclocal.go.com, "Federal Indictment for slavery couple; Police: Worst case they've ever seen"

> – "millionaire couples accused of keeping two Indonesian women as slaves in their luxurious home for years and viciously inflicting abuse"
>
> – prosecutors said the women were subjected to beatings, scalding water thrown on them, forced to climb stairs repeatedly, to take as many as 30 showers in 3 hours, made to eat 25 hot chili peppers at one time, fed little, slept on mats in kitchen

3) May 30, 2007, WABC-TV, abclocal.go.com, "Judge Ok's Bail For Couple accused of keeping slaves"

> – AUSA Jones called the case one of "modern-day slavery"
>
> – prosecutors said the women were subjected to beatings, scalding water thrown on them, forced to climb stairs repeatedly, to take as many as 30 showers in 3 hours, made to eat

25 hot chili peppers at one time, fed little, slept on mats in kitchen

4) June 4, 2007, cbs2.com, Judge Rejects Bail Package in NY Sllavery Case,"

– "millionaire couple"

5) June 11, 2007, wcbstv.com, "Judge Refuses Bail To L.I. Couple in Slave Case"

6) June 11, 2007, 1010 WINS Radio, wins.com, "Judge Rejests bail Application in L.I. Slavery Case"

7) June 11, 2007, abclocal.go.com, "Bail Denied for couple accused of keeping slaves"

– prosecutors claimed that "suspect's mother threatened to have one of the "slaves" killed after she complained about abusive conditions in the Sabhnani home"

– at Dunkin Donuts, woman said "Mister, Mister, I want to go Home, Indonesia," said Indonesian Foreign Ministry Spokesman"

– AUSA Jones called the case one of "modern-day slavery"

– prosecutors said the women were subjected to beatings, scalding water thrown on them, forced to climb stairs repeatedly, to take as many as 30 showers in 3 hours, made to eat 25 hot chili peppers at one time, fed little, slept on mats in kitchen

8) June 26, 2007, WCBS NewsRadio 880, wcbs880.com, "Appeals court: New York Couple accused of keeping housekeepers as slaves are eligible for bail"

9) June 28, 2007, 110 WINS Radio, 1010wins.com, Prosecutors: Bail Should Mean Armed Guards in L.I. Slave Case"

10) June 28, 2007, wnbc.com, "Prosecutors: Armed Guards Should watch Couple In Slavery Case"

EXHIBIT M

Bail set for LI couple accused of keeping slaves
Police: Worst case they've ever seen

Eyewitness News – Long Island – WABC-TV

May 17, 2007

Bail was set on Thursday for a wealthy couple on Long Island accused of keeping two immigrate women as slaves in their home.

Varsha Mahender Sabhnani and her husband, Mahender Murlidhar Sabhnani had pleaded not guilty to the charges.

The couple showed no reaction as the judge said the two, who are from India, are flight risks, but don't pose a danger to the community. And he called claims that they took the women's passports, refused to pay them and beat them "heinous allegations."

Bail for the wife was set at $2.5 million dollars and for the husband at $1 million dollars. In addition, home detention with electronic monitoring was ordered for the couple, and their personal and business bank accounts were ordered frozen.

Eight friends or business associates were in court and said they'd put up their assets to help make bail.

Meanwhile, a spokesman for Catholic Charities says the women are being cared for at a local hospital. A spokesman for the Indonesian consulate says it's also working to help the women.

Federal Indictment for slavery couple
Police: Worst case they've ever seen

WABC-TV

May 24, 2007

A millionaire couple accused of keeping two Indonesian women as slaves in their luxurious home for years and viciously inflicting abuse for perceived offenses have been indicted on federal slavery charges.

Varsha Mahender Sabhnani, 35, and her husband, Mahender Murlidhar Sabhnani, 51, who operate a worldwide perfume business out of their Long Island home, were arrested last week after one of their servants was found wandering outside a doughnut shop on the region's so-called Gold Coast.

They were not formally charged until an indictment was handed up Tuesday night, charging the couple with two counts of forced labor and two counts of harboring illegal residents. They were taken into custody on a federal complaint filed by agents from Immigration and Customs Enforcement. The Sabhnanis will be arraigned on the indictment Thursday.

A magistrate judge in U.S. District Court in Central Islip set bail last week at $3.5 million Friends and relatives of the couple indicated they would be willing to post bail on their behalf, but as of Wednesday the pair remained in custody.

Authorities uncovered the abuse after one of the women was found by police wandering in Syosset on May 13, wearing only pants and a towel. The woman

is believed to have escaped the Sabhnani's nearby. Muttontown home when she took the trash out the night before. Assistant U.S. Attorney Dernitri Jones has called the allegations "a case of modern-day slavery."

The women, prosecutors said, were subjected to beatings, had scalding water thrown on them and were forced to repeatedly climb up stairs and take as many as 30 showers in three hours - all as punishment for perceived misdeeds. In one case, prosecutors said, one of the women was forced to eat 25 hot chili peppers at one time.

One of the women also told authorities she was cut behind her ears with a pocket knife and both were forced to sleep on mats in the kitchen. They were fed so little, they claimed, that they were forced to steal food and hide it from their captors.

Attorneys for the couple said they intend to fight the allegations.

The defendants, originally from India, are U.S. citizens who had their passports confiscated when they were arrested.

Charles A. Ross, who represents Varsha Sabhnani, said the couple traveled extensively and that the two Indonesian women were free to leave whenever they wished.

The women legally arrived in the United States in 2002; the Sabhnanis then confiscated their passports and refused to let them leave their home, authorities said. Identified in court papers 'as Samirah and Nona, the women said they were promised payments of $200 and $100 a month, but federal prosecutors said they were never given money directly.

One of the victims' daughters living in Indonesia was sent $100 a month, prosecutors said.

They have since been cared for by Catholic Charities, according to a spokesman for Immigration and Customs Enforcement.

In a separate proceeding, Mahender Murlidhar Sabhnani filed a federal lawsuit last week alleging that L'Oreal and Giorgio Armani had illegally copied the name of his business' upscale men's cologne brand known as Attitude. Sabhnani contracts with firms overseas to manufacture the perfume and then sells it in the U.S. and elsewhere, said Sam Israel, his attorney in the civil case. An attorney representing L'Oreal and Giorgio Armani declined comment.

Judge OK's bail for couple accused of keeping slaves

WABC-TV

May 30, 2007

The millionaire couple accused of keeping two Indonesian women as slaves will be permitted to post $3.5 million bail, a federal judge decided Wednesday.

The bail comes with a provision that the couple remain under home detention with electronic monitoring and 24-hour surveillance, all paid for by them.

U.S. District Court Justice Thomas Platt ruled that 35-year-old Varsha Mahender Sabhnani and her husband, 51-year-old Mahender Murlidhar Sabhnani, could be released from jail despite the vehement objections of prosecutors, who contend the Long Island couple may have hidden financial assets they could use to flee the country.

Prosecutors also argued that Varsha Sablmani's mother in Indonesia had sought to bribe one of the victim's family with $28,000 to make the case go away. They also claimed the suspect's mother threatened to have one of the "slaves" killed after she complained about abusive conditions in the Sabhnani home.

The judge said he was confident the couple did not pose a "risk of flight," provided they adhere to strict conditions of confinement inside their Muttontown home.

"For all practical purposes, this will be home jail," Platt said.

The couple's U.S. passports were confiscated when they were arrested, and their bank accounts have been frozen.

The judge said the allegations of bribery and threats in Indonesia, which were denied by defense lawyers, were not his primary concern.

"I don't see myself as an international judge," Platt said.

He told the lawyers for both sides they had until Friday to negotiate the precise details of a bail agreement, including exactly how the security restrictions will work. He said if they fail to agree, he would impose bail restrictions himself; otherwise, the couple can be released whenever the lawyers settle on the terms.

"We're very, very pleased that the defendants are getting out," defense attorney Jeffrey Hoffman said.

The couple will put up their Manhattan apartment, as well as liquidate some investments, to cover the bail, said Charlie Ross, another defense attorney.

The Sabhnanis, who operate a worldwide perfume business out of their mansion, were arrested May 13 after one of the Indonesian women was found wandering outside a nearby Dunkin Donuts shop.

She apparently had escaped the night before when she was putting out the trash, prosecutors said.

Unable to speak English fluently, she showed her wounds and Indonesian passport to a manager at the shop and said, "Mister, mister, I want to go home, Indonesia," said Indonesian Foreign Ministry spokesman Kristiarto Legowo.

The second victim was found when agents from Immigration and Customs Enforcement searched the house later the same day.

The Sabhnanis have been charged with two counts of forced labor and two counts of harboring illegal residents. Each faces up to 20 years in prison if convicted.

Assistant U.S. Attorney Demitri Jones has called the allegations "a case of modern-day slavery."

The women, prosecutors said, were subjected to beatings and scalding water thrown on them, forced to climb stairs repeatedly and take as many as 30 showers in three hours, all as punishment for perceived misdeeds. In one case, prosecutors said, one of the women was made to eat 25 hot chili peppers at one time.

One of the women also told authorities she was cut behind her ears with a pocket knife and both were forced to sleep on mats in the kitchen. They were fed so little, they claimed, that they stole and hid food from their captors.

Identified in court papers as Samirah and. Nona, the, women said they were promised payments of $200 and $100 a month, but federal prosecutors said they were never given money directly. One of the victims' daughters living in Indonesia was sent $100 a month, prosecutors said.

They have since been cared for by Catholic Charities; a spokesman declined to comment on their current condition, citing privacy concerns.

Judge Rejects Bail Package In NY Slavery Case

CBS

June 4, 2007

A millionaire couple accused of keeping two Indonesian women as slaves in their mansion for years [ ] judge chided prosecutors and defense lawyers that a complex bail agreement that would allow the [ ] was inadequate.

Varsha Mahender Sabhnani, 35, and her husband, Mahender Murlidhar Sabhnani, 51, are charged in [ ] and harboring undocumented citizens after one of the Indonesian women was found wandering outs[ ] couple's Muttontown mansion muttering that she had been injured and wanted to return to her native country.

Last week, U.S. District Court Judge Thomas Platt ruled after a series of bail hearings that he would [ ] combined $3.5 million bail, provided they remained under home detention with electronic monitoring [ ] by the Long Island couple.

Although he remained soft-spoken, the judge did not disguise his displeasure with some of the para[ ] summoning the parties to his courtroom to discuss the case.

"This is not what I had in mind at all," he said, adding the proposed bail package was "an open invit[ ]

The judge was particularly displeased with the security aspects of the couple's release, which

would [ ] possibility that the couple install special lighting to illuminate the perimeter of the property.

He also said the couple's three daughters and one son would have to be subjected to searches every [ ]

Although the Sabhnanis agreed to pay for all aspects of security at their home while they await trial [ ] judge noted that they had not provided any money in advance to cover those costs.

Defense attorney Charles Ross expressed optimism that the judge's concerns could be met. The judge [ ] case for Wednesday.

The Sabhnanis, U.S. citizens originally from India, had their U.S. passports confiscated when they [ ] frozen.

The Sabhnanis, who operate a worldwide perfume business out of their mansion, were arrested May [ ] was found wandering outside a nearby Dunkin' Donuts shop. The woman apparently had escaped [ ] prosecutors said.

Unable to speak English fluently, she showed her wounds and Indonesian passport to a manager at [ ] to go home, Indonesia," according to Indonesian Foreign Ministry spokesman Kristiarto Legowo.

The second woman was found when agents from Immigration and Customs Enforcement searched [ ]

Assistant U.S. Attorney Demitri Jones has called the allegations "a case of modern-day slavery."

The Sabhnanis have been charged with multiple counts of forced labor and harboring illegal residents [ ] up to 20 years in prison if convicted.

The Indonesian women have since been cared for by Catholic Charities.

Judge Refuses Bail to L.I. Couple In Slave Case

WCBS-TV

June 11, 2007

A federal judge on Monday refused to grant bail to a couple accused [ ] slaves in their mansion for five years, finding that no conditions would be suitable to allow the million[ ] their trial.

Last month, U.S. District Court Judge Thomas Platt indicated he might be willing to allow Varsha Mah[ ] Mahender Murlidhar Sabhnani, 51, to be freed on $3.5 million bail if a set of conditions of house arre[ ] the defense team.

The judge held several hearings at which the parameters of the couple's release on bail were discuss[ ] the Sabhnanis present a "risk of flight, no such conditions or combination of conditions would adequa[ ] defendants" at future court dates.

The Sabhnanis – she's from Indonesia, he's from India – had no visible reaction to the judge's ruling [ ] to appeal.

Jeffrey Hoffman, who represents Varsha Sabhnani, said he was surprised by the judge's decision. "The [ ] he told reporters outside the courtroom,

The Sabhnanis, both U.S. citizens, have pleaded not guilty to a federal court indictment accusing the [ ] undocumented citizens in their Muttontown mansion. Their trial is set for Sept. 10.

[ ] muttering that she had been injured and wanted to return to her native country. The woman apparen[ ] putting out the trash, prosecutors said.

The second woman was found when Immigration and Customs Enforcement agents searched the cou[ ].

Both told prosecutors they had been mentally and physically abused and were paid virtually nothing [ ].

The Sabhnanis, in their bid for bail, had offered to turn their home into a virtual prison, agreeing to [ ] entrances to the home and have restrictions on their telephones and Internet access. They also [ ] monitoring and would have been permitted to leave the home only for doctor's appointments or to [ ].

The security detail, which would have been financed entirely by the couple, was estimated at $15,00[ ].

Stephen Scaring, a high-profile Long Island defense attorney who took over as Mahender Sabhnani's [ ] disappointed but looked forward to being vindicated at trial.

"This case is long on spin and short on truth," he said.

Defense attorneys previously said that the Sabhnanis, who operated a worldwide perfume business [ ] for weeks at a time and the two Indonesian women could have left the Muttontown home whenever [ ].

Judge Rejects Bail Application in L.I. Slavery Case

Associated Press

June 11, 2007

By FRANK ELTMAN

A federal judge on Monday refused to grant bail to a couple accused of keeping two Indonesian women as slaves in their mansion for five years, finding that no conditions would be suitable to allow the millionaires to remain under house arrest until their trial.

Last month, U.S. District Court Judge Thomas Platt indicated he might be willing to allow Varsha Mahender Sabhnani, 35, and her husband, Mahender Murlidhar Sabhnani, 51, to be freed on $3.5 million bail if a set of conditions of house arrest could be agreed to by prosecutors and the defense team.

The judge held several hearings at which the parameters of the couple's release on bail were discussed, but ultimately he found that because the Sabhnanis present a "risk of flight, no such conditions or combination of conditions would adequately assure the presence of the defendants" at future court dates.

The Sabhnanis she's from Indonesia, he's from India had no visible reaction to the judge's ruling, but their attorneys said they intended to appeal.

Jeffrey Hoffman, who represents Varshá Sabhnani, said he was surprised by the judge's decision.

"This couple unquestionably deserves bail," he told reporters outside the courtroom.

The Sabhnanis, both U.S. citizens, have pleaded not guilty to a federal court indictment accusing them of slavery and harboring undocumented citizens in their Muttontown mansion. Their trial is set for Sept. 10.

They were arrested May 13 after one of the Indonesian women was found wandering outside a doughnut shop not far from the couple's home, muttering that she had been injured and wanted to return to her native country. The woman apparently had escaped the night before while putting out the trash, prosecutors said.

The second woman was found when Immigration and Customs Enforcement agents searched the couple's home later that day.

Both told prosecutors they had been mentally and physically abused and were paid virtually nothing for the services as domestic servants.

The Sabhnanis, in their bid for bail, had offered to turn their home into a virtual prison, agreeing to have security officers monitor the entrances to the home and have restrictions on their telephones and Internet access. They also would have been subjected to electronic monitoring and would have been permitted to leave the home only for doctor's appointments or to see their lawyers.

The security detail, which would have been financed entirely by the couple, was estimated at $15,000 a day.

Stephen Scaring, a high-profile Long Island defense attorney who took over as Mahender Sabhna-

ni's lawyer on Monday, said his client was disappointed but looked forward to being vindicated at trial.

"This case is long on spin and short on truth," he said.

Defense attorneys previously said that the Sabhnanis, who operated a worldwide perfume business out of their mansion, frequently traveled for weeks at a time and the two Indonesian women could have left the Muttontown home whenever they wanted.

Appeals court: New York couple accused of keeping housekeepers as slaves are eligible for bail

Associated Press

June 26, 2007

A couple accused of keeping two Indonesian housekeepers as slaves in their mansion for several years should be eligible for bail before their trial, an appeals court ruled Tuesday.

A three-judge panel for the 2nd U.S. Circuit Court of Appeals in Manhattan said Varsha Mahender Sabhnani, 35, and Mahender Murlidhar Sabhnani, 51, are entitled to bail while they await trial on federal charges of slavery and harboring undocumented citizens.

The Sabhnanis were arrested in May after one of the housekeepers was found wandering outside a doughnut shop near their Long Island home. The second woman was found when Immigration and Customs Enforcement agents searched the home later that day.

Both women told prosecutors they had been mentally and physically abused and were paid almost nothing for their work since 2002.

U.S. District Judge Thomas Platt denied bail despite proposed release conditions that included house arrest with $15,000-a-day security detail monitoring entrances to their home.

The Court of Appeals set a Wednesday deadline for prosecutors to submit bail conditions that adequately prevent the Sabhnanis from fleeing.

Prosecutors and defense attorneys declined to comment on the decision. A trial date has not been set.

Prosecutors: Bail Should Mean Armed Guards in L.I. Slave Case

Associated Press

June 28, 2007

Prosecutors are calling for armed guards to keep tabs on a wealthy couple accused of enslaving two Indonesian housekeepers, if the two are released on bail.

Prosecutors have opposed bail for Varsha Mahender Sabhnani and her husband, Mahender Murlidhar Sabhnani, citing fears that the millionaire Long Island couple might leave the country.

But an appeals court said Tuesday that the Sabhnanis were entitled to bail while awaiting trial on a federal charges of slavery and harboring undocumented citizens. The couple has agreed to pay a total of $3.5 million in bail and a potential $15,000 a day for electronic monitoring and 24-hour surveillance for their Muttontown mansion.

The court told prosecutors to specify additional bail conditions they would consider suitable to prevent the Sabhnanis from fleeing.

To assistant U.S. Attorney Mark Lesko, those conditions include constant oversight by guards armed and authorized to use "reasonable force" if the Sabhnanis or their daughters show signs of fleeing. The Sabhnanis are U.S. citizens, and their passports were confiscated after their arrest in May. But prosecutors fear the two have relatives overseas who could provide a safe haven if they fled. Varsha Sabh-

nani, 35, is from Indonesia; her husband, 51, is from India.

Prosecutors also said in court documents Wednesday that they wanted an accounting monitor to keep watch over the Sabhnanis' finances, and prosecutors proposed to boost Mahender Sabhnani's bail from $1 million to $2 million.

Meanwhile, the Sabhnanis' lawyers submitted new suggestions of their own. Varsha Sabhnani's lawyer, Susan Wolfe, said in court papers that a security firm had suggested it might not need three monitors as had been proposed to keep track of the couple.

It was unclear when the appeals court might rule on the proposals.

The Sabhnanis' former housekeepers have told authorities they were mentally and physically abused and paid almost nothing for their services. The Sabhnanis' lawyers have denied that the workers were abused or held against their will.

U.S. District Court Judge Thomas Platt initially indicated he might release the couple on $3.5 million bail if attorneys could agree on conditions of house arrest, but he later denied bail after concluding the Sabhnanis posed a flight risk. He was overruled by the Court of Appeals.

Feds: Couple Held Women Captive In Swank L.I. Community

WABC-TV

Two Indonesian women were subjected to beatings and other abuse and forced by a couple to work in their home in a swank Long Island neighborhood without pay for several years, federal prosecutors said Tuesday.

Authorities said they uncovered the abuse after police found one of the women wandering outside a doughnut shop on Sunday morning, wearing only pants and a towel.

Varsha Mahender [ ] husband, Mahender [ ] were facing [ ] in Central Islip on [ ] women against their [ ].

A federal complaint [ ] live in East [ ] shore community in [ ] two Indonesian [ ] domestic servants, [ ] leaving the house for [ ] bring trash to the [ ].

The women said they [ ] payments of $200 [ ] federal prosecutors [ ] never given money [ ] victim's daughters living in Indonesia was sent $100 a month, prosecutors said.

Prosecutors: Armed Guards Should Watch Couple In Slavery Case

WNBC

June 28, 2007

Prosecutors are calling for armed guards to keep tabs on a wealthy couple accused of enslaving two Indonesian housekeepers, if the two are released on bail.

Prosecutors have opposed bail for Varsha Mahender Sabhnani and her husband, Mahender Murlidhar Sabhnani, citing fears that the millionaire Long Island couple might leave the country.

But an appeals court said Tuesday that the Sabhnanis were entitled to bail while awaiting trial on a federal charges of slavery and harboring undocumented citizens. The couple has agreed to pay a total of $3.5 million in bail and a potential $15,000 a day for electronic monitoring and 24-hour surveillance for their Muttontown mansion.

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To assistant U.S. Attorney Mark Lesko, those conditions include constant oversight by guards armed and authorized to use "reasonable force" if the Sabhnanis or their daughters show signs of fleeing. The Sabhnanis are U.S. citizens, and their passports were confiscated after their arrest in May. But prosecutors fear the two have relatives overseas who could provide a safe haven if they fled. Varsha Sabh-

nani, 35, is from Indonesia: her husband, 51, is from India.

Prosecutors also said in court documents Wednesday that they wanted an accounting monitor to keep watch over the Sabhnanis' finances, and prosecutors proposed to boost Mahender Sabhnani's bail from $1 million to $2 million.

Meanwhile, the Sabhnanis' lawyers submitted new suggestions of their own. Varsha Sabhnani's lawyer, Susan Wolfe, said in court papers that a security firm had suggested it might not need three monitors – as had been proposed – to keep track of the couple.

It was unclear when the appeals court might rule on the proposals.

The Sabhnanis' former housekeepers have told authorities they were mentally and physically abused and paid almost nothing for their services. The Sabhnanis' lawyers have denied that the workers were abused or held against their will.

U.S. District Court Judge Thomas Platt initially indicated he might release the couple on $3.5 million bail if attorneys could agree on conditions of house arrest, but he later denied bail after concluding the Sabhnanis posed a flight risk. He was overruled by the Court of Appeals.

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

VARSHA MAHENDER SABHNANI and MAHENDER MURLIDHAR SABHNANI,

Defendants.

07 cr 429 (TCP)

REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR A CHANGE OF VENUE

This Reply Memorandum is submitted in further support of the joint motion of the defendants for a change of venue because of prejudicial pretrial publicity. In its Response the government takes a grossly unrealistic and myopic view of the inflammatory publicity that has saturated, not just the Long Island community where the defendants reside, but the New York Metropolitan area. Whether the publicity, including the mocking references to Mrs. Sabhnani as "Cruella," is fueled by racial prejudice or class bias or both, it has been virulent and unrelenting. The defendants therefore propose a change of venue to the

United States District Court in Boston or Philadelphia.

A. There Is No Opportunity For A Passage of Time to Dissipate the Prejudice

In arguing against a change of venue, the government invokes two notorious New York area cases where a change of venue was denied. In both cases, the district courts found that time had dissipated the impact of the publicity. In the case at bar, the trial has been scheduled for September 10, 2007. In addition to their Speedy Trial Rights, the defendants do not have the luxury of waiting to see if the passage of time will dissipate any of the impact of the publicity because they would have to spend that time either incarcerated or released on conditions that are extraordinarily onerous and costly.

In *United States v. Yousef*, 327 F.3d 56, 155 (2d Cir. 2002), a case involving the 1993 WTC bombing, the Second Circuit observed that a related trial had occurred two years earlier, "the press coverage had substantially subsided by the time Yousef was brought to trial, and there was minimal publicity in the months immediately preceding his trial." In *United States v. Volpe*, 42 F. Supp. 2d 204 (E.D.N.Y), there was a lapse of almost two years, from August, 1997 to March, 1999, between the height of the publicity and the time scheduled for jury selection. *Id.* at 217, *citing Patton v. Yount*, 467 U.S. 1025, 1035 (1981) (passage of time highly relevant to judging prejudicial effect of pretrial publicity). Moreover, the defendants in Volpe were police officers and, as heinous as the crime against Abner Louima was, police officers enjoy a popularity that wealthy, ethnic, naturalized American citizens generally do not.

The other cases cited by the government are similarly distinguishable. In *United States v. Higgs*, 353 F.3d 281, 308 (4th Cir. 2003), the Court found that "the bulk of the coverage occurred contemporaneously with the murders, four years before Higgs' trial," and "there was no evidence of any media coverage between the time of the indictment and . . . the initial hearing on the motion for a change of venue." In *United States v. Kopp*, 2005 WL 839672 (W.D.N.Y. 2005), at the time of the scheduled jury selection, more than two years had passed from the defendants' related state court conviction, more than three years had passed from the publication of a government agent's inflammatory statement, and six years had passed since the murder itself. The court held that such passage of time would significantly dissipate any alleged prejudice to the defendant. *Id.* at *3, *5. The court further noted that a significant amount of the media attention was generated by the defendant's conduct in giving interviews to local reporters wherein he confessed to involvement in Dr. Slepian's death. *Id.* at 4.[1] *Compare United States v. Friedman*, 854 F.2d 535, 542 (2d Cir. 1988) (pursuant to defendant's request and Fed. R. Crim. P. Rule 21, Judge Knapp conducted the trial, involving corruption in

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[1] The government cites *Knapp v. Leonardo*, 46 F.3d 170, 176 (2d Cir. 1995), claiming that a change of venue was denied there, where "83% of the prospective jurors were dismissed because they had prejudged defendant's guilt based on pretrial publicity." Govt. Br. at 12. The government fails to note that this percentage was a defense contention which the government disputed, and which the court never endorsed. 46 F.3d at 174, fn. 1.

the New York Parking Violations Bureau, in New Haven with jurors from the Hartford area).

The government seeks to justify the inflammatory nature of its comments during the bail proceedings, which were repeated day-in-and-day-out by the press, by claiming that the comments "were made during hotly contested bail proceedings." Govt. Br. at 7. Every criminal case involves "contest" and adversarial advocacy. That is no excuse for government attorneys to jettison all sense of proportion and fair play, at a time when the defendants have not seen any of the alleged evidence in order to "contest" it. For example, the government described in excruciating detail the alleged injuries and degradation the housekeepers suffered, even though they were in possession of a document, apparently written by one of the housekeepers, stating as follows (translated into English):

> Here Mamah is troublesome to [my] employer. [I] did it on purpose [to made my] employer upset and return me home. I call my employer mean as a tiger. Over here Mamah lies a lot. Never says the truth. . . .

The translation of this letter or journal entry is attached to the Affirmation of Stephen P. Scaring, submitted this date with the Defendants' Reply Memorandum in support of their Motion for a psychological examination of Jane Doe Moreover, the government's inflammatory comments were made in the context of a claim that the defendants were a danger to the community, a claim which both a Magistrate and a District Court Judge rejected, and which the government did not even press in the Court of Appeals. The argument's lack of merit warranted caution and circumspection rather than the spewing of

heightened rhetoric. Not only did the government make oral accusations, but it publicly filed its photographic evidence with the court, essentially delivering it to reporters and prospective jurors, rather than filing it under seal or simply handing it up to the court during the proceedings.

Contrary to the government's claim that "no specific testimony has been revealed [or reported] concerning this case," Govt. Br. at 13, the government made numerous allegations about events that could only have come from the mouths of its witnesses.[2] Indeed, during the first two appearances, the prosecutor spread on the record very specific statements of its witnesses.

> 1) AUSA Jones alleged that Mrs. Sabhnani "systematically, repeatedly, [and] viciously attacked Jane Doe 1" with "her fists," with "wooden rolling pins," with "wooden brooms;" she "cut [Jane Doe 1] with a knife, she poured scalding hot water on her," and forced her to take repeated showers, all as some form of punishment "in the defendant's twisted mind." (Tr. 5/15/07 at 8-9).
>
> 2) AUSA Jones claimed that the women "didn't have any money. They didn't have any friends. They barely knew where they were." Id. at 24-25.
>
> 3) AUSA Jones claimed that Mrs. Sabhnani told Jane Doe I that Jane Doe I's "god is . . . a

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[2] If the government did not anticipate that such statements would be part of the testimony in this case, it had no business making allegations about the purported events.

> four letter word for fecal matter," and that Mrs. Sabhnani's "god is better. Look at what he gave me. He gave me good fortune and four good kids." (Tr. 5/17/07 at 8-9)

Since AUSA Jones was obviously not present at the time of the alleged events, she could only have been reporting the anticipated testimony of her witnesses.

B. The Reporting Has Been Anything But Balanced

The government's argument that defense counsel "fanned the flames of media attention," resulting in "balanced" coverage "equally" attributable to the parties is demonstrably inaccurate. For example, in the following articles, the reporting is grossly slanted against the defendants; it repeats the prosecutors' detailed inflammatory statements while including entirely benign comments from defense counsel:

> **1) New York Post, May 16, 2007, titled "Cruel L.I. Slave Masters" (Govt. Ex. 1)**
>
> **(A) Quoted Defense Comment:**
>
> "This is not a human-trafficking ring. My client wants to clear his name."
>
> **(B) Quoted Prosecution Comments:**
>
> a) "Less than a mile away [from the Sabhnani home], authorities said, was what had become their hell on earth; an antiques-stuffed, cedar-shakers mansion where she was beaten with brooms and rolling pins, repeatedly sliced on the ears with a paring

knife, starved and forced to sleep on the kitchen floor.

b) "Varsha – a 45 year-old-mother of four – was the main torturer who doled out the horrific punishment while her husband, 51 watched, officials said."

c) "The conduct the defendants committed is monstrous," [said AUSA Jones]. It's truly a case of modern-day slavery."

d) "But if the victims – ages 51 and 46 – had any dreams of partaking in even a smidgen of their employer's good life, they were sorely mistaken, officials said."[3]

2) Eyewitness News Report, May 30, 2007 (Govt. Ex. 9)

(A) Quoted Defense Comment:

"We're very, very pleased that the defendants are getting out."

(B) Quoted Prosecution Comments:

a) [AUSA] Jones has called the allegations "a case of modern-day slavery"

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[3] The article includes numerous other statements about the case, including alleged statements of the victims about their treatment.

b) "The women, prosecutors said, were subjected to beatings and scalding water thrown on them, forced to climb stairs repeatedly and take as many as 30 showers in three hours, all as punishment for perceived misdeeds. In one case, prosecutors said, one of the women was made to eat 25 hot chili peppers at one time"

3) Associated Press, June 9, 2007 (Govt. Ex. 23)

(A) Quoted Defense Comment:

"We're trying to get them out as soon as possible . . . . They're excited to get home to their children"

(B) Quoted Prosecution Comments:

"Prosecutors allege that the couple held the housekeepers from 2002 to 2007 as virtual slaves, denying them freedom of movement, subjecting them to serious physical abuseand paying them no wages except $100 a month sent to relatives abroad."

4) New York Post, May 20, 2007, "Cruella's Kids Subpoenaed" (Govt. Ex. 30)

(A) Quoted Comment of Attorney for Daughter Pooja:

Three of the children have been subpoenaed to appear before federal grand jury Tuesday.[4]

(B) Quoted Prosecution Comments:

Authorities say "the wealthy Long Island couple [] ruthlessly enslaved two Indonesian women"

5) New York Daily News, May 25, 2007, "Cruella's Kids Subpoenaed" (Govt. Ex. 32)

(A) Quoted Comment of Attorney for Daughter Pooja:

"We are pretty confident those [bribe] allegations will be withdrawn or proven to be false."

(B) Quoted Prosecution Comments:

a) "Federal prosecutors leveled new accusations yesterday against a couple

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[4] Contrary to the government's suggestion that attorneys for grand jury witnesses improperly disclosed to the press information concerning "secret grand jury proceedings," Govt. Br. at 10, Rule 6(e)(2)(A) specifically states that **"[n]o obligation of secrecy may be imposed on any person** except in accordance with Rule 6(e)(2)(B)." Rule 6(e)(2)(B) prohibits disclosure by grand jurors, interpreters, court reporters, and government attorneys and personnel.

charged with keeping slaves in their Muttontown mansion, describing an attempt to buy off one of the alleged victims."

b) [AUSA] Jones said Varsha Sabhnani comes from a wealthy and influential family in Indonesia."

c) [Regarding release on bail] "'We might as well give them a ride to the tarmac at JFK Airport,' [AUSA] Lesko warned the judge. 'They have enough money to not just leave a plane – they could buy a plane.'"

(C) Additional reporting in the articles showing lack of balance as well as incitement of class bias:

"Pooja Sabhnani left in a $60,000 Porsche SUV without speaking to reporters.

6) Washingtonpost.com and Chinadaily.com, USA Today May 25, 2007 (Govt. Ex. 33, 34, 35)

(A) Quoted Comment of Attorney for Daughter Pooja:

a) "Obviously the allegations were upsetting, but at this point we're pretty confident."

b) "Defense lawyers, who have denied that the workers were abused or held against their will, were disappointed by the new allegations but said they would be 'withdrawn or proven false.'"

(B) Quoted Prosecution Comments:

a) "Prosecutors have called the allegations 'truly a case of modern-day slavery."

b) "'The defendants operated a house of torture,'[AUSA] Mark Lesko told the judge . . "

c) Prosecutors "also said they learned that Varsha Sabhnani earlier had threatened the other victim that she would have her husband, who still lives in Indonesia, arrested if she did not comply with her orders."

d) "Prosecutors said the women were beaten, scalded and forced to repeatedly climb stairs and take as many as 30 showers in three hours _ all as punishment for perceived misdeeds. They said one was forced to eat 25 hot chili peppers at one time."[5]

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[5] While one article cited by the government (Govt. Ex. 14) quoted Oscar Michelen as describing the proposed bail conditions as "Spandau in Muttontown," Mr. Michelen represented

The amount of reporting about arguments made in defense motion papers pales in comparison to the repeated reports of the allegations and of the prosecutors' inflammatory comments, which were frequently quoted in articles with derisive titles referring to Mrs. Sabhnani as "Cruella."

Indeed, almost two months after the initial bail arguments, the Daily News, in reporting on the outcome of the bail appeal on July 10, 2007, repeated the government's alleged statements/anticipated testimony of its witnesses: "one woman said she was forced to sleep on the floor and was beaten with a stick, cut with a small knife and scalded with hot water. Scars and bruises covered her body, authorities said. The women claim they were paid nothing, but that $100 per month was wired to relatives in Indonesia." *See* Exhibit A, attached hereto; *see United States v. Engleman*, 489 F. Supp. 48, 51 (E.D. Mo. 1980) (change of venue granted prior to voir dire where "specific testimony of essential witnesses [had] been outlined in the media").

There has been no indication of any abatement of the media interest. Articles have appeared continuously, chronicling every event in the case, either in court or in court papers. Articles have appeared on July 10, 2007 (Daily News, New York Times, Newsday); July 11, 2007 (Newsday); July 13, 2007 (New York Post, Daily News); July 14, 2007 (Newsday); July 17, 2007 (Newsday); July 18, 2007 (Newsday);

Mr. Sabhnani for one appearance and was promptly replaced by Mr. Scaring.

July 24, 2007 (Newsday); July 31, 2007 (New York Post); August 3, 2007 (Newsday); and August 4, 2007 (Newsday). These articles are attached collectively hereto as Exhibit A.

CONCLUSION

As set forth above and in the defendants' previously filed motion and memorandum of law, the defendants have established a reasonable likelihood that pretrial publicity will deprive them of their Fifth and Sixth Amendment rights to a fair trial and that a change of venue should be granted pursuant to F. R. Crim. P. Rule 21(a). As the news reports attached hereto and to the defendants' motion demonstrate, the publicity has been pervasive, continuous, saturating, and slanted against the defendants, particularly to the extent that it includes catchy, derisive headlines that presume the guilt of the defendants. By the time of jury selection in September, only five months will have passed from the time of the barrage of the most inflammatory publicity, far from enough time to dissipate the prejudice. Under the circumstances of this case, delaying decision on this motion until after voir dire would unjustly increase the burden, expense and inconvenience, not only to the defendants, but to the court and witnesses as well. *See United States v. Engleman*, 489 F. Supp at 50. A change of venue should therefore be granted.[6]

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[6] In the event this court denies defendants' motion, they will seek a jury questionnaire, as in *United States v. Jones*, 2002 WL 32086479 at *6 (D. Conn.), cited by the government, as well as other procedural measures designed to identify jurors whose views have been influenced by the pretrial publicity.

Dated: New York, New York
August 10, 2007

Respectfully submitted,

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TO: AUSA Mark Lesko
AUSA Demitri Jones

REPLY EXHIBIT A

Appeals judge to free couple in slave case

New York Daily News

July 10, 2007

By THOMAS ZAMBITO

The wealthy Long Island couple accused of torturing two housekeepers and holding them as virtual slaves in their Muttontown mansion will go free before their September trial.

A Manhattan federal appeals court overruled Judge Thomas Platt's decision to keep Varsha Sabhnani, 35, and her husband, Mahender Sabhnani, 51, locked up despite their offer to post a multimillion-dollar bail package.

The 2nd Circuit U.S. Court of Appeals sent the case back to Platt after deciding the couple had agreed to "extraordinary" physical conditions that will ensure they show up for trial.

The Sabhnanis will pay for a private security force to keep an eye on them 24 hours a day. And their bail package, secured by cash and property, has been increased by $1 million to $4.5 million.

The couple faces up to 40 years in prison on charges of forced labor and harboring illegal aliens. They are accused of keeping two Indonesian women in their home under slavelike conditions and subjecting them to physical abuse.

One woman said that she was forced to sleep on the floor and was beaten with a stick, cut with a small knife and scalded with water. Scars and bruises covered her body, authorities said.

The women claim they were paid nothing, but that $100 per month was wired to relatives in Indonesia.

Federal prosecutors sought to keep the couple in jail while they await trial and questioned hundreds of wire transfers totaling $17.2 million that their perfume business made to banks in Qatar and the United Arab Emirates.

The appeals court said the physical conditions of home arrest would prevent the couple from using their wealth to flee.

"They can operate their lucrative business - and, therefore, draw on its profits - from any number of overseas locations," the court wrote. "Thus, it is apparent that significant physical as well as financial restrictions are necessary to assure defendants' appearance at trial."

Their home computers will be monitored, and the pair will be accompanied by security on any travel outside the home.

The couple has four children between the ages of 17 and 23 who continue to live with their parents. Their mansion and a Manhattan apartment have been valued at $3 million. They also have $500,000 in jewelry stashed away in safe deposit boxes and cash and securities valued at between $3 million and $5 million.

Manhattan: Bail In Forced-Labor Case

New York Times

July 10, 2007

A wealthy Long Island couple accused of forcing two Indonesian housekeepers to serve as virtual slaves in their mansion can be freed on bail, according to a federal appeals court. In a ruling released yesterday, the United States Court of Appeals for the Second Circuit said the couple, Varsha Mahender Sabhnani, 35, and Mahender Murlidhar Sabhnani, 51, of Muttontown, should be released based on the government's conclusion that conditions can be imposed to ensure that the couple did not flee. The couple have been held since May, when they were arrested on charges of forced labor and harboring illegal immigrants.

'Slave' suspects win bail but release date unclear

Newsday

July 10, 2007

By ROBERT E. KESSLER

A federal appeals court has ordered a wealthy Muttontown couple, accused of enslaving two Indonesian women, to be released on bail to home detention. But it is unclear how soon that might occur.

The couple, Varha Sabhnani and her husband Mahender, have been in jail for two months.

A three-judge panel of the U.S. Appeals Court in Manhattan late Friday overturned a lower court decision that said there were no conditions that would prevent the Sabhnanis from fleeing, even after the two had agreed to spend as much as $10,000 a day to turn their home into a form of prison.

"We are grateful that the Court of Appeals agreed with our position," said Jeffrey Hoffman, Varha Sabhnani's attorney.

"They are looking forward to getting out as quickly as possible," said Mahender Sabhnani's attorney, Stephen Scaring.

Robert Nardoza, a spokesman for the U.S. Attorney's office for the Eastern District, declined to comment.

The appeals court returned the case to the lower court judge, U.S. District Court Judge Thomas Platt in Central Islip, to finalize the conditions under

which the couple would be released, including new guidelines recommended by federal prosecutors.

Platt scheduled a bail hearing for Friday, but it is uncertain how long it would take to satisfy some of the new conditions that would have to be imposed, including having an independent accountant review all the Sabhnanis' finances.

The appeals court said in a hearing two weeks ago that the Sabhnanis were entitled to bail while they awaited trial, and asked federal prosecutors to come up with additional conditions to those the Sabhnanis had agreed to.

In addition to the review of the Sabhnanis's finances, the prosecutors' new conditions include armed guards instead of passive monitors, with the power to use "reasonable force" if they believe the Sabhnanis or any of their children are attempting to flee; an explanation of the Sabhnanis' past financial dealings with one of Mahender's brothers who lives in Dubai; and an accounting monitor to oversee the Sabhnanis' future finances, including that of the perfume business they operate.

Also, the couple agreed to pay a total of $4.5 million bail, upping Mahender's bail from $1 to $2 million. Varsha's bail remains at $2.5 million.

The new cost of home detention could run as much as $15,000 a day, depending upon the level of security.

In its decision, the appeals court ruled that it was up to Judge Platt to decide how many monitors or guards were necessary to ensure adequate home detention.

'Slave' suspects: Woman hurt self

Newsday

July 11, 2007

By ROBERT E. KESSLER

Defense attorneys for a Muttontown couple accused of enslaving two Indonesian women they hired as housekeepers filed a court brief late yesterday arguing that one of the women, who officials said had been tortured, had most likely inflicted the wounds on herself.

Attorneys for Varsha and Mahender Sabhnani said a psychiatrist hired by the defense should be appointed by U.S. District Court Judge Thomas Platt to examine the woman, who has been identified as Jane Doe 1.

Federal prosecutors could not be reached last night for comment.

The defense brief was filed in U.S. District Court in Central Islip in anticipation of a pretrial hearing scheduled for Friday. The hearing had been scheduled for routine motions, but was adjusted to include a hearing to determine when and under what conditions the Sabhnanis should be released on bail.

A federal appeals court last Friday overturned Platt's decision denying the couple bail and ruled that the judge should oversee the conditions of their release to home detention.

In court papers asking for the psychiatric exam, defense attorneys Stephen Scaring, Jeffrey Hoffman and Susan Wolfe said Jane Doe 1 "suffered from a long history of mental illness, which was exacerbated by the psychological trauma of learning, approximately a year ago, that her son had died."

Following news of the death, Jane Doe 1's "behavior became increasingly erratic, culminating on the evening of May 12, 2007, when she wandered away from the Sabhnani residence, half-dressed, only to be discovered the following morning at a Dunkin' Donuts in Syosset."

To bolster their case, the attorneys said Jane Doe 1 had initially told federal investigators that some of her wounds occurred because she "was abused by a Madame Hurley from Jakarta, suffering from cigarette burns to her arms and feet and having her ears pulled and torn."

The Sabhnanis do not smoke or allow cigarettes in the home, the couple's attorneys said. "Madame Hurley" was not further identified.

The defense added that psychiatrist Barent Walsh said self-injury is often "triggered by stressful situations," including "the loss or threat of loss of a relationship."

Though the attorneys said Walsh had not personally interviewed or examined Jane Doe 1, he has viewed photographs of her wounds and said in an affidavit that he found them to be "consistent with self-inflicted cuts I have seen in many clients over the years."

'SLAVE' LABOR OF LOVE

New York Post
July 13, 2007

By KIERAN CROWLEY

An immigrant who claims she and another woman were held as slaves by a millionaire Long Island couple told cops she had a romantic "relationship with someone living outside the residence" during her captivity, court papers show.

Defense lawyer Jeffrey Hoffman says the revelation from the "slave," identified only as "Nora," proves the women were lying about being imprisoned by Varsha and Mahender Sabhnani.

Federal prosecutors declined to comment.

Meanwhile, the other alleged victim, identified as "Samirah," told Nassau cops that cigarette burns on her arms and cuts on her ears were inflicted by another woman, named "Madame Hurley from Jakarta," Indonesia, according to the police report.

Mahender's lawyer, Stephen Scaring, believes she deliberately injured herself and wants her looked at by a psychologist.

A federal appeals court in Manhattan last week ruled that the Sabhnanis are entitled to bail and should be released into home detention at their Muttontown mansion.

The couple will be in federal court in Central Islip today to iron out details of a home jail plan, including the appointment of a court accountant to review and supervise their fortune - so they cannot use it to flee.

Under the plan, Varsha Sabhnani, dubbed "Cruella," and her husband should be released soon on $4.5 million combined bail and will be fitted with electronic monitoring ankle bracelets.

Their four kids will be searched when they enter or leave the mansion, and the couple's phone and Internet activity will be overseen by guards.

'Slave' drivers point finger at victim

New York Daily News
July 13, 2007

By JOHN MARZULLI

Lawyers for the couple charged with keeping slaves in their Muttontown mansion are suggesting in court papers that one victim is mentally unstable and her injuries were self-inflicted.

Mahender Sabhnani and his wife Varsha have been waging an intense fight to be freed on bail since their arrests on the shocking charges in May, but with a new legal team in place, they're taking aim at the credibility of the government's case.

The Sabhnanis, multimillionaires who operate a perfume business out of their posh home, are casting the allegations that Varsha tortured one victim by slicing her ears with a kitchen knife and burning her with a cigarette as "seemingly improbable."

"We believe the evidence will show that [the victim] suffered from a long history of mental illness, which was exacerbated by the psychological trauma of learning, approximately one year ago, that her son had died," the defense lawyers wrote in court papers seeking an independent mental evaluation of the victim.

The lawyers point out no one in the Sabhnani household smokes cigarettes and that the blood-stained rags and a small knife allegedly used in the

attack were found by investigators in the ceiling of the victims' living quarters.

"Hence, the knife and bloody rags were found in the possession of [the victim], not Varsha Sabhnani," according to the court papers.

Prosecutors contend the victims were brought to the U.S. from Indonesia by the Sabhnanis and forced to work as house slaves for no pay. The victims also were mistreated and subjected to bizarre punishments, including being forced to eat hot peppers and take repeated cold showers, probers said.

The couple fired their original lawyers, and Mahender is now represented by veteran criminal defense attorney Steven Scaring of Garden City, and Varsha by Manhattan lawyers Jeffrey Hoffman and Susan Wolfe.

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Attorneys call for slave case trial to be moved

Newsday
July 13, 2007

By ROBERT E. KESSLER

On the eve of a bail hearing, attorneys for a Muttontown couple accused of enslaving two Indonesian women asked yesterday that their case be moved from Long Island because of "inflammatory" publicity that would make a fair trial impossible.

The attorneys for Mahender Sabhnani and his wife, Varsha, also asked that the trial judge, U.S. District Court Judge Thomas Platt, remove himself in favor of another.

The two requests by defense attorneys Jeffrey Hoffman, Stephen Scaring and Susan Wolfe add to the motions that already were scheduled to be heard today before Platt, including one on when to release the Sabhnanis to home detention.

In their new motions, the defense attorneys said the massive "prejudicial pretrial publicity" required that the trial should take place in an unspecified location distant from Nassau and Suffolk counties. The attorneys cited numerous newspapers articles and transcripts of radio and television shows which, they said, unfairly sensationalized the case.

They said that prosecutors contributed to the atmosphere in the media by painting a picture of two isolated, helpless slaves who had no chance to reach

out for help. In fact, "contrary to this allegation about a lack of opportunity for contact with the outside world, the defense learned through discovery produced only last week that one of the women indicated in a letter that she was having a relationship with someone living outside the [Sabhnani] residence," the defense attorneys wrote.

When asked what the nature of the relationship was, defense attorney Hoffman declined yesterday to comment.

The defense attorneys also asked that Platt replace himself on technical grounds, saying another judge should have been assigned to the case.

Robert Nardoza, spokesman for the U.S. attorney for the Eastern District, declined to comment.

In addition to bail conditions, Platt was scheduled to hear arguments about whether a defense psychiatrist should be permitted to examine one of the Indonesian women, who are being cared for by Catholic Charities.

No bail for pair in Muttontown slave case

Newsday
July 14, 2007

By ROBERT E. KESSLER

If a Muttontown couple acc-used of enslaving two Indonesian housekeepers believed they were getting out of jail on bail to home detention quickly, they were wrong.

The couple, Varsha Sabhnani and her husband, Mahender, were ordered released on bail by a federal appeals court July 6, provided they met a number of conditions. They have been in jail for two months.

But Friday, a lower-court judge who is overseeing their case in U.S. District Court in Central Islip said the Sabhnanis had not met the requirements for release.

"It is only after those conditions have been satisfied that they will be released," said U.S. District Court Judge Thomas Platt, whose initial ruling denying the Sabhnanis bail was overturned by the appeals court. "What has been done so far is not satisfactory."

Assistant U.S. Attorneys Mark Lesko and Demetri Jones agreed with Platt's assessment of the situation.

Platt said a proposal submitted by the Sabhnanis, for example, to ensure they would not flee from home detention was inadequate because it allowed

the security firm the couple would pay for to decide the number of monitors and whether the monitors would be armed.

Platt said it was up to him to decide on the number of monitors, according to the appellate court, and he wanted shifts of three armed guards around the clock.

Platt said he also was concerned about the lack of clarity for monitoring of the Sabhnanis' computer and the screening of people coming into and out of their home at 205 Coachman Place E.

Among the other conditions that Platt also said had not been met was an adequate accounting of the Sabhnanis' personal and business finances. The couple run a perfume manufacturing and distribution business out of their home.

Platt appointed an accountant Friday, to be paid for by the Sabhnanis, to review their finances and report back to the court. An affidavit submitted by Mahender Sabhnani's brother Ashok in Dubai, explaining the past financial arrangements between them, also did not meet his request for a full explanation of that situation, Platt said.

Platt asked that federal prosecutors and the Sabhnanis' attorneys, Jeffrey Hoffman, Stephen Scaring and Susan Wolfe, finalize the security and financial oversight arrangements with federal prosecutors.

In other matters, Platt said it was premature to decide defense motions on moving the Sabhnanis' trial from Long Island because of prejudicial publicity, and allowing a psychiatrist hired by the Sabhnanis to examine one of the alleged victims. Defense at-

torneys contend that she is mentally ill and self-inflicted wounds for which Mrs. Sabhnani was blamed.

Platt denied a motion by defense attorneys to have the trial transferred on technical grounds to another judge.

Attorney raps subpoenas in slavery case

Newsday

July 17, 2007

By ROBERT E. KESSLER

An attorney for one of the daughters of a Muttontown couple accused of enslaving two Indonesian woman said yesterday it was morally objectionable for federal prosecutors to subpoena his client in a possible attempt to get evidence against her parents.

"I find it offensive that the government would subpoena children to testify against their parents," said attorney Avi Moskowitz, of Manhattan, a former federal prosecutor, who now represents Tina Sabhnani, 20, the daughter of Varsha and Mahender Sabhnani. "I'm a parent. It may be legal, but there is something that in the pit of my stomach says it is wrong. And it would be wrong to most people," Moskowitz said.

Moskowitz spoke at the U.S. District Court in Central Islip during a break in the testimony of his client before a grand jury investigating her parents. The couple is charged with slavery and harboring illegal aliens.

Federal prosecutors declined to comment. It is rare for children to be asked to testify against parents, but it does occasionally happen.

Both Tina and her sister, Dakshina, 19, had been subpoenaed to testify yesterday before the grand jury.

But Tina Sabhnani's testimony was not completed after a full day before the grand jury, and she was told to return to continue next Tuesday, Moskowitz said late in the afternoon. He declined to say what she had discussed with the grand jury.

Dakshina Sabhnani's attorney, Roland Riopelle, left the courthouse in the early afternoon with his client, saying she had not testified because her sister was still before the grand jury. Riopelle said she also was told to return next Tuesday. He declined further comment.

The sisters had been initially subpoenaed to testify before the grand jury several weeks ago, but declined then to do so, invoking their Fifth Amendment privilege against self-incrimination.

The two daughters lived in the Sabhnanis home during the five years the government alleges the two Indonesian women were enslaved and one tortured by their mother, Varsha.

For yesterday and next week's appearances, the government has given both daughters immunity from prosecution for anything they say. Therefore, they cannot invoke the privilege against self-incrimination. The daughters must, however, testify truthfully or face perjury charges.

Defense attorneys for their parents previously have said that the slavery and torture allegations are false and that the two Indonesian women were free to come and go, and even remained in the house by themselves for months at a time when the Sabhnanis went on extended vacations. The attorneys also have said that one of the woman had mental problems and her wounds were self-inflicted.

Daughters subpoenaed in slave case

Newsday

July 17, 2007

By ROBERT E. KESSLER

Two of the daughters of a Muttontown couple accused of enslaving two Indonesian women have been subpoenaed to testify today before a federal grand jury, possibly to glean evidence against their parents, said several sources familiar with the case.

Tina Sabhnani, 20, and her sister, Dakshina, 19, were subpoenaed several weeks ago by the grand jury but they invoked their Fifth Amendment privilege against self-incrimination and declined to testify.

Their parents, Varsha and Mahender Sabhnani, have been in jail for more than two months, awaiting trial on charges of slavery and harboring illegal aliens.

This time the daughters will be granted immunity, which means they cannot invoke the Fifth Amendment but will not face charges stemming from any testimony. But if they do not testify truthfully, they may face perjury charges, according to the sources.

The two lived in the family home at 205 Coachman Pl. E. when the Indonesian women were allegedly enslaved and during the time one says she was tortured regularly.

There is no privilege preventing a child from testifying against a parent, as there is barring a husband from testifying against a wife, a clergyman against a parishioner, or a medical doctor against a patient.

"It's a very rare situation," said defense attorney Joseph Conway, a former federal prosecutor who represents a third daughter, Pooja, 22, who was not subpoenaed for today's grand jury session. "But there is nothing to prevent the government from doing so."

Other defense attorneys and federal prosecutors involved in the case either declined to comment or could not be reached.

Lawyer raps daughter's subpoena in slave case

Newsday

July 18, 2007

By ROBERT E. KESSLER

An attorney for one of the daughters of a Muttontown couple accused of enslaving two Indonesian women said yesterday that it was morally objectionable for federal prosecutors to subpoena his client in a possible attempt to get evidence against her parents.

"I find it offensive that the government would subpoena children to testify against their parents," said attorney Avi Moskowitz, of Manhattan, a former federal prosecutor, who now represents Tina Sabhnani, 20, the daughter of Varsha and Mahender Sabhnani.

"I'm a parent. It may be legal, but there is something that in the pit of my stomach says it is wrong. And it would be wrong to most people," Moskowitz said.

Moskowitz spoke at the U.S. District Court in Central Islip during a break in the testimony of his client before a grand jury investigating her parents. The couple is charged with slavery and harboring illegal immigrants.

Federal prosecutors declined to comment. It is rare for children to be asked to testify against parents, but it does happen.

Both Tina and her sister, Dakshina, 19, had been subpoenaed to testify yesterday before the grand jury.

But Tina Sabhnani's testimony was not completed after a full day before the grand jury, and she was told to return to continue next Tuesday, Moskowitz said late in the afternoon. He declined to say what she had discussed with the grand jury.

Dakshina Sabhnani's attorney, Roland Riopelle, left the courthouse in the early afternoon with his client, saying she had not testified because her sister was still before the grand jury. Riopelle said she also was told to return next Tuesday. He declined to comment further.

The sisters had been initially subpoenaed to testify before the grand jury several weeks ago, but declined then to do so, invoking their Fifth Amendment pri-vilege against self-incrimination.

The two daughters lived in the Sabhnani home during the five years the government alleges the two Indonesian women were enslaved and one tortured by their mother, Varsha.

For yesterday and next week's appearances, the government has given both daughters immunity from prosecution for anything they say. Therefore, they cannot invoke the privilege against self-incrimination. The daughters must, however, testify truthfully or face perjury charges.

Defense attorneys have said the slavery and torture allegations are false and that the two Indonesian women were free to come and go. They also have said that one of the women had mental problems and that her wounds were self-inflicted.

Daughters to testify in slavery case

Newsday

July 24, 2007

By ROBERT E. KESSLER

Two of the daughters of a Muttontown couple charged with enslaving two Indonesian women are scheduled to appear U.S. District Court in Central Islip Tuesday before a grand jury investigating their parents' case.

And their parents – Varsha Sabhnani and her husband, Mahender – are scheduled to be in the same court on Thursday for a hearing in the continuation of their ongoing attempt to get out of jail on bail.

The two daughters, Tina, 20, and Dakshina, 19, originally appeared before the grand jury several weeks ago but invoked their Fifth Amendment privilege against self-incrimination.

Last Tuesday they both were granted immunity, meaning they had to answer the grand jury's questions truthfully, but whatever they said could not be used to bring a criminal case against them. But after a full day, federal prosecutors said they had not completed questioning Tina Sabhnani, and that both daughters should return to be heard by the grand jury.

In the case of their parents, U.S. District Judge Thomas Platt said last Friday that it was "too pre-

mature" to discuss when to release the couple to home detention despite an impassioned plea by a defense attorney that they already had agreed to turn their home into what amounted to an escape-proof prison.

Stephen Scaring, the attorney representing Varsha Sabhani, said she and her husband had agreed to fulfill all the demands that federal prosecutors wanted, including putting up a total of $4.5 million bail, paying for three armed-guard around the clock, and sealing most of the entrances to their home at 205 Coachman Place E.

But Platt said the Sabhanis still have to meet the accounting condition.

'INDONESIAN SLAVE' WAS NUTS: LONG ISLAND FAMILY

New York Post

July 31, 2007

By STEFANIE COHEN

The Indonesian woman allegedly kept as a household slave by a wealthy Long Island couple was so nuts she urinated on the floor, into her boss' shoe, and defecated on herself, the suspects' daughter told the feds.

The 51-year-old domestic worker found wandering the streets half-naked and muttering about a "master" in May frequently acted "in a strange fashion," the couple's daughter, Dakshina Sabhnani, 18, declared in an affidavit filed yesterday in Brooklyn federal court.

Dakshina's parents, Varsha "Cruella" Sabhnani and Mahender Sabhnani of Muttontown, have been in custody since May on charges of beating and enslaving the worker, identified only as "Samirah," and another immigrant worker, called "Nona."

Samirah "urinated in the guest room of our house. On one occasion, I witnessed her urinating into my father's shoe while standing on the staircase of our home. On another occasion, [Nona] informed me that [Samirah] had defecated in her clothes," Dakshina wrote.

In addition, Dakshina wrote, [Nona] "repeatedly accused [Samirah] of stealing her clothing and food." The affidavit was filed to support a request that Samirah be given an independent psychological evaluation.

Once again, bail denied in slavery case

Newsday

August 3, 2007

By ROBERT E. KESSLER

A Muttontown couple will be spending more time in jail.

After having been jailed for three months since their arrest on charges of enslaving two Indonesian woman, the couple, Varsha and Mahender Sabhnani, heard yesterday that it would be another two to five weeks before a federal judge in U.S. District Court in Central Islip even considers releasing them on bail to home detention.

District Judge Thomas Platt said that the accountant reviewing the finances of the couple had first to complete his work.

When the accountant, Clifford Starkins, of Huntington, estimated it might take up to five weeks to complete the review, Platt suggested that the procedure might be expedited. Half of the thirty or so banks and stock brokerages which had Sabhnani financial accounts and which had not provided information yet might be prodded into acting more quickly by subpoenas, Platt said.

A federal Court of Appeals ruled a month ago that the Sabhnanis should be released on bail provided they met a number of conditions, including providing a thorough accounting of their finances.

They also agreed to pay as much as $15,000-a-month to turn their home at 205 Coachman Place East into a virtual prison, including shifts of three armed-guards around the clock.

Mr. Sabhnani's attorney, Stephen Scaring, argued unsuccessfully that Platt should release the couple to home detention immediately, and that the judge was not following the spirit of the appeals court ruling, which said that people should be entitled to bail.

"Even if there were hidden assets, it wouldn't matter," Scaring said, adding that the Sabhnanis couldn't escape from home detention "short of being beamed up," a reference to the science-fiction transportation method from "Star Trek". Scaring, and Mrs. Sabhnani's attorney, Jeffrey Hoffman, said that at the rate things were going, the couple might not get out of jail before the start of their trial, scheduled to begin Sept. 10.

Afterward, Scaring said he was considering returning to the state Court of Appeals to try to get the couple released more quickly.

In another related matter, Assistant U.S. Attorney Mark Lesko said at the court hearing that the government might file a new indictment against the Sabhnanis shortly, possibly adding more charges and more defendants. But he declined to elaborate.

HOME DETENTION FOR 'SLAVE COUPLE' DELAYED

Newsday

August 4, 2007

By ROBERT E. KESSLER

HOME DETENTION FOR 'SLAVE COUPLE' DELAYED. A Muttontown couple will be spending more time in jail. After having been jailed for three months since their arrest on charges of enslaving two Indonesian woman, the couple, Varsha and Mahender Sabhnani, heard Friday that it would be another two to five weeks before a federal judge in U.S. District Court in Central Islip even considers releasing them on bail to home detention.

U.S. District Judge Thomas Platt said that the accountant reviewing the finances of the couple had to complete his work first. A federal Court of Appeals ruled a month ago that the Sabhnanis should be released on bail provided they met a number of conditions, including providing a thorough accounting of their finances. They also agreed to pay as much as $15,000-a-month to turn their home at 205 Coachman Place East into a virtual prison, including shifts of three armed-guards around the clock. Mahender Sabhnani's attorney, Stephen Scaring, argued unsuccessfully that Platt should release the couple to home detention immediately, and that the judge was not following the spirit of the appeals court ruling.

APPENDIX H

[1] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

VARSHA MAHENDER SABHNANI and
MAHENDER MURLIDHAR SABHNANI,

Defendants.

Docket #CR-07-429

United States Courthouse
Central Islip, New York
October 17, 2007
9:30 a.m.

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE WILLIAM D. WALL,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: ROSLYNN R. MAUSKOPF
United States Attorney
One Pierrepont Plaza
Brooklyn, New York 11201
By: MARK LESKO
DEMETRI JONES
Assistant U.S. Attorneys

For the Defendants: JEFFREY HOFFMAN, ESQ.
SUSAN WOLFE, ESQ.
For Varsha Sabhnani

STEPHEN P. SCARING, ESQ.
JOSHUA E. DUBIN, ESQ.
For Mahender Sabhnani

* * * *

[19] * * * *

MR. SCARING: Judge, I don't want to belabor the proceeding, but I think it's necessary for the record that we respond to what counsel said before regarding the defense's participation in publicity.

This case, as your Honor knows, blew out of proportion based upon statements that were made by the government at the bail hearing. And it's the result of those statements that such things as slavery or the worst situation we've ever seen or the term Cruella came about and this awful picture of Mrs. Sabhnani kept appearing on the front page, people on Long Island, as well as Queens and Brooklyn and Staten Island that we draw from certainly [20] read the Post and the Daily News and certainly read Newsday, there was almost a competition between the three papers to come out with an article that was as offensive as could be against these defendants. And when you read what people say, they write in their answers here regarding what they read, there is a viciousness about this, there's a hatred, there's a sense of hate that is hard to describe.

* * * *

[27] MR. DUBIN: Your Honor, the defense has an objection to Mr. Armstrong. He's repeatedly stated throughout the questionnaire that he will have a difficult time remaining fair and impartial.

THE COURT: Do you want to give me specifics?

MR. DUBIN: I point your Honor to questions 3, 128, 137, 138. In 3 he states that he cannot be fair and impartial.

THE COURT: I see it.

MR. DUBIN: It gets worse as it goes.

THE COURT: 128?

MR. DUBIN: Correct.

THE COURT: And 1 –

MR. DUBIN: 137. And 138.

THE COURT: All right. I'm going to – the government want to be heard?

MR. LESKO: Yes, your Honor. I think that all of those answers are premised upon the understanding that the defendants are illegal aliens, which they're not. I'm not saying that this juror shouldn't be struck for cause, but I think we should do a voir dire to ask his opinion or views based upon that altered view of the case.

THE COURT: Given, again, as I said earlier, the strength of the jury pool in the numbers, I am going to err on the side of caution. So I'm going to sustain the [28] challenge for cause.

Number 2.

MR. DUBIN: Number 2 is Wilfredo Arellano, your Honor. In response to question 5, excuse me, in

response to question 1, the juror states that he found what he read in the Daily News and the Post appalling.

Again within the context of our, and I won't continue to state it, but within the context of taking into consideration the media attention and that sort of visceral reaction, we were very troubled by that.

MR. LESKO: I would just note –

THE COURT: Very troubled that he read the Post?

MR. DUBIN: No, troubled by the reaction to what he read.

THE COURT: What specifically?

MR. DUBIN: To the use of the term appalling.

THE COURT: What question are you on?

MR. DUBIN: Question number 1, your Honor.

THE COURT: Mr. Lesko.

MR. LESKO: Your Honor, actually we won't object to that.

THE COURT: Okay. I'll sustain a challenge for cause to juror number 2.

* * * *

[30] MR. DUBIN: Yes, your Honor. In response to question 2 and 136, which essentially ask the same thing, whether or not the juror would be able to follow the Court's instructions with regard to staying away from media, this juror doesn't just state that he might have a problems, but he states that he's a quote/unquote, media junkie.

THE COURT: Which question is that?

MR. DUBIN: Number 2 and 136.

MR. LESKO: I would note, your Honor, I think this juror is also raising a hardship, the last page, the addendum, he's the COO of Cold Spring Harbor lab and has a union issue. We believe that the answer specifically, he should be voir dire'd on his hardship issue, but I think we object to strike him for cause because I don't think the answers provide a basis for striking this juror for cause.

THE COURT: I don't think those answers do. I'm just reading the last page.

MR. LESKO: Okay.

THE COURT: He indicates "it would be a particularly difficult time for me to miss two weeks."

MR. DUBIN: If you read the entirety of his explanation on page 38, I was particularly concerned that this juror is going to have a difficult time remaining.

[31] THE COURT: I'm going to sustain the challenge for cause on juror number 4.

Five is George Babey.

MR. DUBIN: Yes, your Honor, in response to questions 4, 99 and 137, again, this juror repeatedly states that he cannot remain fair and impartial because of what he either read or saw.

THE COURT: The answer to number 4 is sufficient. That's sustained.

Claudia Bailey, number 6.

MR. DUBIN: Yes, your Honor, Claudia Bailey stated in response to questions 99 and 137, in response to question 99 that she would have a difficult

time remaining fair and impartial because of her ability to focus. And again 137, echoing her hardship concerns on question number 5, that she's a full-time student at BMCC. It would be particularly hard to focus on the school work and particularly concerned about the length of the trial.

MR. LESKO: That's fine.

THE COURT: That's sustained.

Number 7 is Rachel Beneventano.

MR. DUBIN: Again, your Honor, in response to multiple questions on the questionnaires, I'll read it off, 3, 4, 128, 137, 138, this juror continually states that she cannot remain fair and impartial. In fact, in [32] response to questions 3 and 4 she says there's no way that the defendants could convince her that they're innocent.

THE COURT: Sustained.

* * * *

[34] * * * *

MR. DUBIN: Yes, your Honor. Again, this juror on four questions throughout the questionnaire indicates that – excuse me, I don't know if that's a male or female, Jovy, but the juror would have a difficult time remaining fair and impartial; 3, 4, 137, 138.

THE COURT: 3 and 4?

MR. DUBIN: Yes, sir. She used the term cruel intentions with quote/unquote will effect her in response –

THE COURT: Sustained.

MR. DUBIN: Thank you.

THE COURT: Number 11 is Connell Byrne.

MR. DUBIN: Yes, your Honor, in response to question number 1, the juror states that they will, his reaction to the media is the entire case seems hard to believe in this day and age, but more troubling is question 128 where he says that all illegal aliens should be sent back. He specifically states that he cannot remain fair and impartial.

THE COURT: Where does it say that?

MR. DUBIN: 128.

THE COURT: It says illegal aliens sent back. [35] Where does it say that he can't be fair and impartial?

MR. DUBIN: The question asks do you have strong opinions about the United States immigration laws and policies such that you may have a difficult time remaining fair and impartial in this case.

THE COURT: That's sustained.

MR. LESKO: Your Honor, if I can be heard on that.

THE COURT: Yes. I'm sorry, Mr. Lesko.

MR. LESKO: First, the exposure to Newsday, that statement is ambiguous and would be in favor of the defense. By simply checking off the box yes but then stating that illegal aliens should be sent back, I would ask that he be brought back to follow up on that answer because that actually is a statement that's consistent with the law. If you're present illegally in the United States, under the law you should be deported. I'd like to know why he would be unable to be impartial in this case.

THE COURT: Given the strength of our jury pool, why even try to resurrect the juror that indicates that he will have a difficult time being fair and impartial.

MR. LESKO: The strength of our jury pool.

THE COURT: Is going to diminish?

MR. LESKO: Yes.

THE COURT: That's typical in voir dire, isn't [36] it? The jurors at the end of the day look a lot better than the beginning of the day.

That's sustained.

* * * *

[37] * * * *

MR. DUBIN: Your Honor, I believe we're on to Brittany Carlock.

THE COURT: Correct.

MR. DUBIN: This juror states in response to question number 1 that she's shocked and appalled about what she heard and read, what she heard and read, they seem guilty. In the spirit of *U.S. v. Haines* that in and of itself is enough to have this juror excused for cause.

THE COURT: Mr. Lesko?

MR. LESKO: We don't object, your Honor.

[38] THE COURT: That's sustained.

MR. DUBIN: Next is Frank Cascio.

Your Honor, in response to question number 1, again, in the event that the juror was not excused I would just ask that he be, that we follow up on this prospective juror's reaction because he doesn't state

one. That aside, I believe there's sufficient cause to have this juror excused. In response to question 128, the juror states that he cannot remain fair and impartial and further that he thinks the immigration policy is quote/unquote, a joke.

Additionally, the juror states in response to question 136 that he would have a difficult time following the Court's instructions regarding the media.

MR. LESKO: Your Honor, we acknowledge that question 128 does raise an issue, but we think we should follow up on that answer.

THE COURT: I don't think it's that strong. I'm going to overrule that objection.

What I'm doing is marking these follow-up questions with little Post-its here so if we get to that juror I'll follow up.

Number 15.

MR. DUBIN: I would point out for the record, I understand we're moving on, this juror has unequivocally [39] stated that they cannot remain fair and impartial because of the immigration laws on 128.

THE COURT: Number 15. Valerie Castillo.

MR. LESKO: If I can have a moment, your Honor. I'm ready.

MR. DUBIN: In response to question 100, this juror states that co-conspirator testimony will help the verdict because these people helped the person commit the crime. Again, assuming guilt. No crime has been proven in this case.

Next, on question 138, the juror states that she would have a difficult time remaining fair and impartial because she knows people here illegally and

doesn't feel they should be deported. Again, unequivocally stating that she would have a difficult time remaining fair and impartial in this case.

MR. LESKO: Your Honor, we think while the questionnaire does raise issues, we need to do follow-up questions regarding those topics because it seems it would be a slight language issue with this juror that could affect the content of her answers and the answers on their face do not raise the issue of an absolute bias, just a concern on their part.

THE COURT: Okay. That's overruled.

MR. DUBIN: Your Honor, I don't think she has an [40] issue with –

THE COURT: We'll question that juror on Monday. Number 16 is Kanwal Chaudhary.

MR. DUBIN: Your Honor, this prospective juror indicates that he is of Indian descent and states unequivocally in response to questions 137 and 138 that although he initially thought that he could be fair, "I would be more judgmental of Indians." I think that's of particular concern considering the ethnicity of our clients and especially where it comes in the questionnaire that the juror was forthright and is candid about the fact that he would have a difficult time remaining fair and impartial.

MR. LESKO: Your Honor, admittedly it's a close call. He seems to be struggling with the issue, he uses the term might, I initially thought I would be fair, I think we should just follow up with this prospective juror.

MR. DUBIN: Your Honor, in response to question 138, he's essentially indicating, that this sort of

thing, in his belief, goes on in India where he says it's not surprising, something that is done in India.

I have a – and then in response to 138, "I have a lot of contact with Indian people and I just feel I might be more judgmental with them knowing the culture."

[41] THE COURT: That can go either way.

MR. DUBIN: It can go either way. But he says in the previous question, it's not surprising, he's not surprised. He's saying I can't be fair and impartial.

THE COURT: That's sustained.

17, Peter Cimino.

MR. DUBIN: Again, your Honor, in response to multiple questions throughout the questionnaire, calling your Honor to question number 1, where the prospective juror indicates that they were quote/unquote, appalled, a word that we see arising often and it's a seemingly popular visceral reaction as we go through the questionnaires.

MR. LESKO: Your Honor, we don't object.

THE COURT: Sustained.

18 is Kimberly Carrington.

MR. DUBIN: If the Court would indulge me for one moment.

THE COURT: Sure.

MR. DUBIN: Your Honor, we're on Kimberly Carrington, I believe.

THE COURT: Correct.

MR. DUBIN: In response to question number 1, she says this is a horrible tragedy and the defendants are guilty.

[42] MR. LESKO: We don't object, your Honor.

THE COURT: Okay. Sustained.

Number 19.

MR. DUBIN: Theresa Engel, your Honor.

THE COURT: Correct.

MR. DUBIN: Again, in response to various questions throughout the questionnaire, question 128 the juror states that she would have a difficult time remaining fair and impartial because quote/unquote, there are too many illegals and the government needs to crack down.

Again, in response to question 137, again towards the end of the questionnaire, I would note, actually the second to last question, going through a lot personally with her divorce, her emotions are all over the place, particularly of concern here in addition to the fact that she stated she can't be fair and impartial due to the emotional nature of the expected testimony of the alleged victims.

MR. LESKO: Your Honor –

MR. DUBIN: Excuse me. I apologize. I paused. I'm sorry, Mr. Lesko.

In response to question 124 as well, she says that she has a negative feeling about those who employ domestic help as this is an example of the, quote, ultra [43] rich people are spoiled and should try doing their own cleaning."

MR. LESKO: Your Honor, again, admittedly it's close to the line but we believe we need to do some follow-up questions with this juror, particularly because the question that would trigger the most concern obviously is 148 where she checks the box indicating she would have a difficult time remaining fair and impartial.

The problem with her answer though is she's presuming that the defendants are here present illegally. And she says that she could, indicates that she may think she could be fair unless, if the defendants were citizens of the U.S. and pay taxes like the rest of us. Indeed the defendants are citizens of the U.S. and there's no indication –

THE COURT: She indicated she can't be fair and impartial and she thinks rich people should do their own cleaning.

Sustained. Number 20.

* * * *

[45] * * * *

MR. DUBIN: Yes, your Honor, Joseph Gallagher, again, in response to two questions on the questionnaire indicates he has a difficult time remaining fair and impartial. Question 4, also feels some anger towards the defendants, if this is true; and number 128, again, difficult time remaining fair and impartial.

MR. LESKO: Your Honor, the full answer to 4 is, "I already feel some anger" with question marks above it, "towards the defendants, if this is true, but I realize this needs to be proven beyond a reasonable doubt."

MR. DUBIN: I apologize. That wasn't on my – I have sort of a cheat sheet that captures all the information on the questionnaire so I wasn't intending in any way not to read the entire answer.

But again, even considering that the prospective juror says that they need to be proven beyond a reasonable [46] doubt, if the presumption of innocence is intact, there's no reason to feel some anger towards the defendants.

I point out also that the juror in response to question 128, says, "I believe law enforcement is not putting enough effort into illegal immigration," as his explanation for why he can't remain fair and impartial.

And given the nature of the very charges in this case, harboring illegal aliens, there's grave concern that his concerns are going to bleed over into his judgment of the defendants.

MR. LESKO: Your Honor, first 128, the juror did not check either.

THE COURT: He circled them both, so it's overruled.

Jeannine Giberti, number 22.

MR. DUBIN: Your Honor in response to questions 3, 4, 138. She assumes the defendants are guilty.

MR. LESKO: No objection.

THE COURT: Very well. Sustained.

MR. DUBIN: We're up to Michael Giossi, your Honor.

THE COURT: Right.

MR. DUBIN: Again, your Honor, this falls into that category of whether or not stating that you're going to be fair and impartial is enough and this juror says in [47] response to question 128. And again, in the spirit of *U.S. v. Haines* we feel a juror's expression that they cannot remain fair and impartial is enough to have that juror excused for cause.

Again, I point out also that in response to question number 5, the juror indicates that he works evenings, watches his seven-month-old daughter during the day while his wife presumably works during the day and I will just mention that in the jury selection plan for the Eastern District, in section 7, it specifically states that a person who's essential to the care of a child under 10 shall be granted excusal upon request and this juror has clearly done that.

MR. LESKO: Your Honor, first, he hasn't made it definitive. He says it would be very hard. We should follow up on that.

Second, 128 seems to be a question, I would stress it may have been inartfully worded in the sense take it asks such that you may quote/unquote have a hard time remaining fair and impartial. The juror says needs immigration laws need to be stronger. I think that needs to have follow-up questions.

THE COURT: I agree. But in this particular juror, it is a hardship with the child, but I'll sustain the question. As a general proposition, I agree with you, [48] Mr. Lesko, that's going to require a follow-up on 128.

MR. DUBIN: I think your Honor sees the strong variance to the response to the question which would indicate whether or not the juror is going to have a particular hard time.

* * * *

MR. DUBIN: This again stems from her response to several questions, starting to question number 1, in response to the media accounts. And just harkening back to Mr. Scaring's arguments to the Court earlier, this juror particularly states that the defendants look bad. So I have an open mind, I guess.

MR. LESKO: I believe we should bring this juror back for follow-up questions.

MR. DUBIN: I have more.

[49] THE COURT: Let's hear it.

MR. DUBIN: In response to question number 5, your Honor, she states a pretty convincing argument with regard to hardship. The prospective juror is a teacher and needs to prepare her students for an AP exam and she states a six to eight week absence can mean they would be severely penalized.

THE COURT: She teaches AP biology, that's sustained.

MR. DUBIN: Your Honor, the next on the list I have is number 26, George Hapsis.

THE COURT: Correct.

MR. DUBIN: In response to questions 128, 137, 138, and I will also add 100 and that was the question about co-conspirators where the juror says they're like the defendants, they helped. Question 137, can't because of work. Question 138, I served in the military, feel strongly about people who aren't citizens living here, off of our Social Security, indicating a clear bias against –

THE COURT: What about question 102?

MR. DUBIN: Foreigners.

THE COURT: It indicates she'd have a difficult time following the rule of law.

MR. DUBIN: I was getting to that.

THE COURT: Sustained.

[50] MR. LESKO: Your Honor, if I can raise one issue.

THE COURT: Yes.

MR. LESKO: My only concern is that this individual's native language is Greek and so his answers are a bit oddly worded. It may be that he's just inartfully drafting a narrative. I agree the answers do give pause, but it appears he speaks Greek currently and for that reason we would ask that he be brought in and voir dire'd.

THE COURT: That's declined. The challenge is sustained.

Number 27, Francis Hilley.

MR. DUBIN: Your Honor, in response to question number 1, and I think that I alluded to this particular juror in my opening remarks to the Court this morning, just that this juror concedes that she's read about this case and Newsday and heard about it on TV and says I thought servitude or slavery ended with the Civil War.

THE COURT: And then adds that she has not formed an opinion as to innocence or guilt until I hear both sides.

MR. DUBIN: Right. And I guess this falls into that category is that I explained earlier, which is that if a juror is given a strong visceral reaction and

then [51] saying I haven't formed an opinion, likewise when they say they can be fair and impartial on question number 3 but I've already stated in question number 1 that the defendants seemed guilty, it's counterintuitive and our position is that the defendants shouldn't be on an unlevel playing field and trying to convince people to embrace the presumption of innocence. She's assuming they're guilty by saying I thought servitude or slavery ended with the Civil War.

* * * *

MR. LESKO: We just did Francis Hilley. We're up to Carol Hoffman.

[52] MR. DUBIN: In response to questions 3 and 4, particularly number 4, the juror indicates she would have a difficult time remaining fair and impartial in this case because she was struck by her boyfriend and knows how cruel and humiliating this is. She leaves number 3 blank but she clearly indicates that she would be unable to serve as a fair and impartial juror because of that experience. Again, she indicates the same on question 55, just in reference to being a victim of abuse and she reiterates her difficulty remaining fair and impartial on the very last question or excuse me, on the third last question of the questionnaire number 138 which indicates she has previous knowledge of the case and have discussed it with friends and as such would have a difficult time remaining fair and impartial.

MR. LESKO: Your Honor, I think this juror needs to be questioned about her answers and for cause.

THE COURT: Overruled.

MR. DUBIN: Your Honor, can I point out to three questions that I omitted.

THE COURT: Yes. On Ms. Hoffman.

MR. DUBIN: Yes, I'd ask your Honor to reconsider. Perhaps I should have started with this. In response to question number 1, she recalls seeing photos of the defendants, their home and the neighbors, "much of [53] the evidence I saw and heard points to them being at fault." She also, in addition to that, and I feel that respectfully submit that that's enough, in response to questions 2, 94 and 102 she states that she would have a difficult time following the Court's instructions. She also states that she knows Detective Rabiglia (ph).

* * * *

[54] * * * *

THE COURT: Do you have an objection to Mr. Johnson?

MR. DUBIN: I do. In response to questions 3, [55] 4, 138 the juror indicates that he would have a difficult time remaining fair and impartial. Because his grandmother and grandfather emigrated to America, discriminated and unfairly –

THE COURT: That's 3. What are the other elements?

MR. DUBIN: 3, 4, 138. I would also note that on 138 he refers to 137 where he says he cannot remain fair and impartial because of his prior opinion from the media coverage.

THE COURT: That's a close call, but I'll sustain the objection.

MR. DUBIN: Just give me one moment, your Honor. I'm just trying to find the question that I had some issue with. Again, I think this one, your Honor, is the one we would just want to follow up on with regard to question 100 where she states the co-conspirators are somewhat responsible for the crime. I guess maybe we would want to clarify at some point that the juror would be instructed with regard to whether or not the crime was committed in the first place as to whether or not they're actually co-conspirators. So I'm going to withdraw my objection to this juror.

THE COURT: Okay. Number 32, Kathryn Keane.

MR. DUBIN: In response to question number 1, [56] your Honor –

MR. LESKO: No objection, your Honor.

MR. DUBIN: She indicates she feels the defendants are guilty.

THE COURT: Sustained.

Michael Kelly.

MR. DUBIN: In response to questions 3 and 4, the prospective juror indicates that he would have a difficult time remaining fair and impartial, that he feels sorry for the two victims and imagined the fear, stress and hopelessness they must have felt. And again, in response to question number 4 he states I don't like bullies, again, he's assuming guilt and stating he cannot be fair and impartial.

MR. LESKO: Your Honor, I think it's a close call. But the answers are a little bit odd and I think call for follow-up questions.

THE COURT: Yes. I agree. That's overruled. We'll follow up.

MR. DUBIN: And questions 3 and 4?

THE COURT: Yes.

MR. DUBIN: Could I mention, again, I guess going forward, I'm going to state all of mine in rapid fire succession because I left out on this one like I did in the previous one, I would note also that the juror [57] indicates that it would be difficult, in response to question number 5, in that they have an adopted son and two foster children.

And your Honor, I just want to say one more thing about question number 3. When a perspective juror says that he feels sorry for the victims, they're alleged victims and this juror is assuming guilt and telling us that he cannot remain fair and impartial, imagine the fear, stress and hopelessness they must have felt and saying I can't be fair and impartial because of it.

THE COURT: I think it requires follow-up questions. I have no intention of rehabilitating any of these jurors. I just want to make sure they're accurate in their responses. That objection is overruled.

* * * *

[58] * * * *

THE COURT: Okay. Number 35 is Natasha Krivykh.

MR. DUBIN: Your Honor, in response to question number 4, the juror indicates that she subconsciously felt the woman in the story is quote/unquote guilty.

In response to question 138, she's claiming she's partial because of her own experiences with immigration and family experiences with immigration. I don't want to speak too much ahead.

THE COURT: That's okay.

MR. DUBIN: And in addition, in response to the question about media exposure, that it was unacceptable and awful.

THE COURT: Which question are you referring to?

MR. DUBIN: That's question number 1 as well and then in response to question 13 she says that she has a difficult time understanding English if it gets, quote/unquote, technical.

So for all of those reasons, her statements that she can not remain fair and impartial in response to 4 and 138, also that she has an a difficult time following the Court's instructions in response to question 61, [59] particularly on question 4 that she feels the woman in the story is, quote/unquote, guilty and she has a difficult time understanding English, your Honor.

THE COURT: Sustained.

MR. LESKO: Your Honor, if I can be heard.

THE COURT: Of course.

MR. LESKO: Question number 1, she's not sure if she's read stories about this case and she indicates that if, in fact, this was true, it would be unacceptable and awful. In response to question number 4, that she actually – she may have subconsciously felt that the woman who enslaved her housekeeper is guilty. She does indicate an issue that we should

probe on follow-up questions, this is the juror I think she's of the type. that you almost have to see her in order and hear her, to adequately assess whether or not she's an appropriate juror. I'm not saying she wouldn't be ultimately subject to a motion to strike for cause but I think out of an abundance of caution we should bring her back.

MR. DUBIN: The juror has repeatedly stated on the questionnaire she has a hard time being fair and impartial.

THE COURT: I agree. Objection sustained.

Susan LaMarca, number 36.

MR. DUBIN: I would point out, your Honor, that [60] in response to question number 1, the juror indicates that she read about the case on the internet and Newsday and has no reaction. I would like to follow up on that question. But in addition, in response to questions 55 and 56 the prospective juror indicates that she has been the victim of abuse, abusive relationship with her father who was very controlling and had a violent temper, her mother and sister were psychologically abused by the father.

So I think particularly given the nature the allegations in this case, we should err on the side of caution and excuse the juror for cause.

MR. LESKO: We object, your Honor. I think the prior history of being abused is not in.

THE COURT: I will overrule the objection and follow up on those areas.

* * * *

[61] * * * *

THE COURT: We're up to number 37, William Larinaccio. Question number 1 says he believes TV. That is trouble.

MR. LESKO: Your Honor, I believe the name of this juror is actually Marinaccio with an M.

THE COURT: Yes.

MR. DUBIN: Your Honor, I pointed out to not only question 1, but question 138, where the prospective juror indicates that he cannot be fair and impartial and he would lean toward the government in this case.

MR. LESKO: No objection, your Honor.

THE COURT: Sustained as to William Marinaccio, number 37.

* * * *

[62] * * * *

MR. DUBIN: Yes. In response to question 138, the prospective juror states "I feel there is a pretty clear-cut case here and I would probably think that [63] they're guilty already."

THE COURT: 138?

MR. DUBIN: Yes.

MR. LESKO: Before that – no. She indicates she does not have an opinion on their guilt. She does however indicate that the facts seem pretty obvious. She does indicate in question number 3 that she can be fair and impartial.

MR. DUBIN: At the end of the question there on question 138 she's saying that she would probably think they're guilty already and the case is pretty clear-cut. I would add to that in response to question

102, she would tend to believe guilt alone for why a defendant would not testify.

MR. LESKO: Actually we have no objection.

THE COURT: Sustained. Okay.

Frank Franco Maffettone.

MR. DUBIN: In response to questions 3, 4, 128, 137 and 138, your Honor, the prospective juror indicates unequivocally that he cannot remain fair and impartial.

THE COURT: Pretty strong statements there, Mr. Lesko.

* * * *

[64] * * * *

MR. DUBIN: In response to questions 3, 4, 99, 128, 137, 138, the prospective juror indicates that he would have a difficult time remaining fair and impartial. Additionally, your Honor, in response to questions 2, 94, 102, 136, Mr. Martinelli indicates he would have a difficult time with the law and following the Court's instructions. He also indicates in response to 105 that he has had negative responses with people from India and [65] Indonesia.

THE COURT: He also claims hardship on 137 and 138, said, "I've had bad experiences with foreign people and I'm not happy with the immigration laws."

Mr. Lesko?

MR. LESKO: We have no objection.

THE COURT: Sustained.

* * * *

[66] * * * *

MR. DUBIN: Yes, your Honor. This juror had a different reaction to the media. He specifically referred to the defendants' bail conditions. He notes from reading an article in Newsday that the defendant wanted to pay for security so they can spend time at home instead of jail and that they shouldn't receive special treatment, already indicating a bias against the defendants because of their bail conditions and in the spirit of erring on the side of caution, we would not like to have someone coming in here feeling they have special treatment or privilege.

MR. LESKO: Your Honor, I think this kind of raises the issue of whether a kind of curative instruction by the Court would either change the juror's view on certain topic or resolve the issue of partiality or not.

Obviously the instruction would be that any bail decision has no bearing on whether or not this juror should assess the case fairly. For that reason, I'd ask that he be brought back for a follow-up question.

THE COURT: The challenge is overruled. I'll follow up on the specific question 1.

[67] Number 45 is Marvin McKenzie.

MR. DUBIN: Yes, your Honor, in response to questions 2 and 136, the prospective juror indicates he would have a difficult time following the Court's instructions regarding staying away from media accounts of this case.

As your Honor –

THE COURT: Number 2? Says no.

MR. DUBIN: All right. Maybe I misread –

MR. LESKO: I think this is a hardship juror.

MR. DUBIN: You know what it was on number 2.

THE COURT: He said he couldn't follow the judge's instructions.

MR. DUBIN: Yes.

THE COURT: Number 5, he says he has a sick mother.

MR. DUBIN: That's right.

MR. LESKO: The answers are a bit cryptic, your Honor, and particularly if I can have a moment –

MR. DUBIN: Question number 138 says he doesn't know if he can fairly serve because he has a problem with patience because and a four- to six-week trial might be an issue.

MR. LESKO: I think we should follow up. The reason is because of the sick mother issue may be [68] legitimate, if it does work, he does have a wife and two sons and the answers are cryptic enough that he may be a person who communicates better orally rather than in writing.

THE COURT: I'm not optimistic that he can communicate better orally than in writing, so I'll overrule the challenge.

46, Thomas Meehan.

MR. DUBIN: Your Honor, in response to question number 5, the juror makes a hardship application with regard to an elderly parent and a student loan.

THE COURT: We'll do some voir dire on Mr. Meehan, so I'll overrule the challenge.

MR. DUBIN: We're on to Ward Moeller, who your Honor, in response to questions 3, 4, 99 and 138 clearly states that he would have a difficult time serving as a juror on this case because he would have a difficult time remaining fair and impartial and I would direct your Honor's attention to the explanations on questions 3 and 4.

MR. LESKO: Your Honor, I think the answers don't, it reflects ambiguity. I think the juror states, I quote, "may have problems with aliens."

And similarly, in response to question number 138, I quote, "may have biases against aliens." It may be [69] that we can strike this juror for cause but we should do some follow-up questions.

MR. DUBIN: Your Honor, we can't wait. This juror in response to 4 questions, raises his doubt that he can remain fair and impartial, and in response to question 1, as well, the media, he says that, "I could believe the guilt of the defendants but I have not drawn a conclusion." Subsequent to that, he repeatedly, he repeatedly states that he can't be fair and impartial and in particular when he states on question 3 that "I may have with problems with aliens and foreigners and imposing power from their wealth," he's getting that from the media that he read where there are allegations here that they're wealthy defendants and they imposed their power of their wealth on the alleged victims here.

THE COURT: I agree. I'll sustain that.

Number 48, Marilyn Morotti.

MR. DUBIN: Ms. Morotti, in response to question 4, indicates she would have a difficult time remaining fair and impartial, your Honor. Because it

seems like an extremely sensitive issue and she's not sure, excuse me, what she's sure will involve unpleasant emotional reaction. Actually she indicates she wasn't sure if she would remain fair and impartial.

On question 5 she indicates a difficulty [70] following the Court's instruction or rules of law. In response to question 102, where she says she would like to hear from the defendants directly.

I think, your Honor, discuss going forward, responses to questions 102 that they would have a difficult time following that rule, I would say just as troubling to the defense as the juror saying they would have a difficult time remaining fair and impartial.

THE COURT: Mr. Lesko?

MR. LESKO: We have no objection.

THE COURT: Sustained.

Elissa Mostransky.

MR. DUBIN: Again, this is another juror that is in her first trimester and indicates that she's experiencing morning sickness.

In addition to that, she indicates financial strain as she just closed on a new home and sitting as a juror for this length of time would be extremely difficult financially for her and her husband.

Additionally, your Honor, she mentions in response to question 128 she would have a difficult time remaining fair – you know what, I apologize, she says no and then crosses it out, and says, "perhaps as a teacher I'm aware of the number of illegal immigrants in the town I live and work, the number

of people living in houses [71] intended for less, I feel it is not being as controlled as it should."

MR. LESKO: Your Honor, I just note for the record we object. It's unclear whether she's moving in the house. It seems like it may be an investment property.

THE COURT: Overruled. I'll follow up on that area.

MR. DUBIN: You also have to follow up on question 128, your Honor.

THE COURT: Which?

MR. DUBIN: Question 128, your Honor.

Your Honor, I think we're on to John Napolitano.

THE COURT: Right. Number 150.

MR. DUBIN: Again, on multiple occasions throughout the questionnaire the prospective juror indicates that he cannot remain fair and impartial in this case. I'll start with number 1, the media exposure, he says "the defendants don't seem like nice people." Number 2, he doesn't know if he can follow the instructions of the court because he doesn't know how he'll be able to avoid it, which is troubling in light of the fact that he already has pointed to an opinion that the defendants don't seem like nice people. Number 3, he can't remain in fair and impartial because he doesn't believe in privilege [72] and servants. Number 4, he has a problem with arrogant people.

THE COURT: He's not going to be able to stand the lawyers then. That's sustained.

* * * *

[75] * * * *

MR. DUBIN: Yes, your Honor. Mr. Norton indicated in response to question 105, that he's had negative experiences with people from India and Indonesia and in particular he mentioned that he thought they have a difficult time getting their points across. It wasn't just in response to passing situations, he's referring to his employees. So keeping in mind that the defendant in this case may or may not testify, but in the event they elect to testify in their defense, that indicates an enormous problem in that the juror is indicating an unpleasant experience in that regard.

In response to questions 128 and 138, in addition, the juror has indicated a difficulty in remaining fair and impartial in this case.

MR. LESKO: Your Honor, one moment, please.

Your Honor, firstly, it seems as if his issues regarding individuals in Indian descent really relate to language, understanding the language and it goes hand and glove with this issue. I think the answer to 128 is more along the lines of an observation by him, it doesn't seem to be overly prejudicial. I'd ask that Mr. Norton be brought back for further examination.

MR. DUBIN: In response to question 117, this juror goes to, I wouldn't say great lengths but some [76] length in responding that he would have difficulty relying on English translations of witnesses' testimony and his concern is getting lost in translation that he wouldn't be able to get a fair read of the witness.

THE COURT: Getting lost in translation.

MR. DUBIN: I've seen the movie.

THE COURT: Sustained. Okay, next.

MR. DUBIN: Your Honor, Richard O'Neill, your Honor, is who I have next.

THE COURT: Right.

MR. DUBIN: I'm going to start with question number 1 where the juror indicates he's read about this case and believes that this couple is probably guilty and it gets worse from there.

128 the juror indicates a difficult time remaining fair and impartial because of the immigration laws. Number 138 he feels they're guilty and should be punished.

THE COURT: Where is that?

MR. DUBIN: Question 138.

MR. LESKO: Your Honor, I somewhat agree with Mr. Dubin. The only concern I have is the answer to number 3 was no. There seems to be some conflict. I'm not saying that this juror ultimately will not be struck for cause, but we should at least bring him back to [77] resolve that conflict.

MR. DUBIN: I raised this issue earlier, and I submit that when – and just briefly, your Honor. I would just like to point you to *U.S. v. Perez*, a Second Circuit case, I don't have the exact citation but I can certainly get it for your Honor, where the Court knows few prospective jurors will admit to bias and most, when asked if they can be fair and impartial in deciding a matter before them answer yes. And then it goes on to explain how the trial judge can look at other factors in deciding impartiality or the partiality of the prospective juror.

Here, in essentially what amounts to the same breath in question number 1, the juror is indicating that he feels the couple is guilty, not only has he formed an opinion but he's formed an opinion as to guilt. And then he reiterates that at the end of the questionnaire, so after he said in response to question 3 that he can remain fair and impartial, he's only responding to question 3 about the allegations. He says in question 1 and then in the third to last question, he feels they should be guilty and should be punished.

THE COURT: I agree. Sustained.

James Ostrowski? Number 54.

MR. DUBIN: It pains me to say it, your Honor, but this juror commented that he recognizes Mr. Scaring [78] and that he quote/unquote, had a poor showing.

MR. SCARING: On a murder case. On a case that he presumably was a juror on, in response to question number 7, your Honor.

MR. LESKO: I don't see anything wrong with that

THE COURT: He's obviously very perceptive. But we'll sustain the objection.

MR. SCARING: Thank you very much, your Honor, for my ego.

MR. DUBIN: Your Honor, the next juror is Samantha Paul, who expresses overwhelming issues throughout her questionnaire with regard to her ability to remain fair and impartial. So I'll point your Honor to questions 3, 128, 137 and most alarming perhaps is 138, which, where the juror says she would have a difficult time remaining fair and im-

partial and comments, "having people here illegally and abusing others doesn't deserve a trial, they should pay for the wrong-doing they committed."

MR. LESKO: No objection.

THE COURT: That's sustained.

56, Lynn Peck.

MR. DUBIN: Again, this juror in response to question number 1 for a media exposure although she notes [79] that if indeed this happened, she states that I believe both she read about the case in the Daily News and the Post and I feel badly, and I think what she said was "I feel badly and sad."

And then on question 3, 4, she indicates that she doesn't know whether she could remain fair and impartial because she works with the disadvantaged and she thinks that will affect her thinking. She works, she indicates, "I work with immigrant/multicultural physically," and it says "multiply handicapped," maybe she meant to say "mentally handicapped" "children, and I'm not sure that this can make me sympathetic."

MR. LESKO: Her answer to question 1 indicates a willingness to be open-minded. She indicates if indeed this happened. I don't think working with immigrants or multi-cultural individuals or handicapped individuals would give rise to a striking for cause, it may give rise to a peremptory strike.

THE COURT: I agree. She's claiming hardship. She's teaching at the school. Sustained on that basis.

Laura Pizzigati.

MR. DUBIN: Your Honor, again, I have, I'm assuming we'll get back to Mr. – just as I think we'll

get back to Mr. Edelman whom we put aside earlier, next in my pile is a Paul Pilipshen P-I-L-I-P-S-H-E-N, I believe [80] that he was on our list to discuss today but I'll put it aside and move to –

THE COURT: I don't have it.

MR. DUBIN: I don't know if Mr. Lesko has that on his list as well. But we can I guess address it at the end.

Next is Laura Pizzigati. Starting with question 1, this prospective juror indicates that she's read Newsday's article and quote, "I felt as if these people were capable and willing to do such a thing," clearly indicating that she's accepted the basis of the article and feels without ever meeting or seeing or hearing any evidence in the case that they're clearly capable of it.

And she indicates on number 4 that she's unable to serve as a fair and impartial juror because she feels pity for anyone treated inhumanely. Again, assuming the alleged abuse did occur. For those reasons we would like to have Ms. Pizzigati stricken for cause.

MR. LESKO: I think the answers are incomplete. I think we need to follow up on these answers.

Particularly the pity answer, that statement alone is not necessarily prejudicial or offensive, so I'd ask that she be brought back.

THE COURT: I agree. It's marked for the follow-up question.

[81] MR. DUBIN: Your Honor, I hate to belabor the point, I'm reading her explanation in number 1 where she says I feel they're capable were capable and willing to do such a thing.

* * * *

[82] * * * *

MR. DUBIN: Again, I would just note the prospective juror's reaction to the media, "I found it horrible if true." I understand that she – I understand she says made no judgment, but I would just note that it is continuing to elicit these strong reactions.

But she does make a hardship application on [83] question number 5 and I would just ask your Honor to take a look at that.

MR. LESKO: We ask that she be brought back for additional questioning.

MR. DUBIN: And it wasn't so much the hardship application as it related to her job, but more as a single mother.

THE COURT: Yes. All right. I'm going to overrule that objection, that challenge, excuse me.

MR. DUBIN: Next, your Honor, is Gail Saidlowar, and in response to question number 1, she knows she doesn't know if she heard of this specific case but there's been a number of similar cases in the newspaper the last year or two and she mentions Newsday and then she goes on to state as presented in the newspaper the defendants appear to be guilty. And I understand she goes on to say "I also know the newspapers often repeat facts incorrectly." But she's starting with or ending with the defendants appear to be guilty.

I mean, I assume that we can bring her in and ask her if it was indeed this case that she was, that she recalls reading about in the paper. But I would want to know whether or not it was this case and if she still feels, having had her memory refreshed,

that it was this case, that they appear to be guilty that she be excused [84] for cause.

I have two more issues with regard to this juror. She also states she has a difficult time following the Court's instructions with regard to the media question number 2, your Honor. And then with regard to question 139, it is my understanding that we won't sit on Fridays, but the prospective juror does indicate that she's a Sabbath observer and we are required to leave sufficiently early on Fridays.

THE COURT: Did Judge Spatt indicate to you folks whether he's going to sit on Fridays?

MR. LESKO: I think he said that he was not.

THE COURT: He usually does not.

MR. SCARING: That's what he said.

MR. DUBIN: Then if she still feels the defendants are guilty –

THE COURT: Overruled, we'll inquire in that regard.

63 is Pierangelo Salmoiraghi.

MR. DUBIN: This was another, I don't know that this was a specific cause challenge, your Honor. I think that this is someone that we just wanted to be sure we followed up on questions we followed up, I would like to require her reactions to other media exposure in response to question 1, where she says "I think this is terrible."

[85] THE COURT: Okay. Overruled.

64.

MR. DUBIN: Charles Schiano, your Honor, again throughout the questionnaire this prospective juror

indicates that he would have a difficult time remaining fair and impartial. Question 3, he says that if a juror is previously indicted and charged, found guilty. He's also been exposed to the case on question number 1, and he indicates the difficulty following the Court's instructions regarding media exposure, question 2. Also says he would have a difficult time remaining fair and impartial, in response to question 128 and a particular concern is his response to that question, your Honor, where he states "no to illegal immigrants, send them home." In response to question 137, the juror also indicates that he's going out of town.

THE COURT: Previous question is he has two scheduled business trips.

MR. DUBIN: Right.

THE COURT: I'm going to sustain that challenge. Allison Shore.

MR. DUBIN: Start with question number 1, your Honor. She states I've seen this case on TV, "I thought it was a horrible thing to do to another person." Again, assuming guilt. In response to question 137 –

[86] THE COURT: Also a teacher.

MR. DUBIN: Also a teacher. She also has a negative response to question 137 and 102, she states, "a defendant doesn't testify, I would wonder what the defendant has to hide."

THE COURT: I have no answer to 137.

MR. LESKO: I don't have an answer either.

MR. DUBIN: I just have a follow-up, a note to myself to follow up because it was left blank. But

102, in addition to the fact that the prospective juror is a teacher, the response to 102 is particularly troubling and I think is a basis for cause for challenge this juror.

MR. LESKO: Your Honor, it's a close call, but I think the answers are of a type that would require some follow-up questions, particularly 102. It seems to me to be a reaction that could be cured by an instruction.

MR. DUBIN: Your Honor, as I understand it, it's not – if the purpose of the questionnaire.

THE COURT: I don't think it's a close call, sustained.

Robert Scoskie. I'm sorry, I didn't mean to interrupt you.

MR. DUBIN: I'm not going to take issue with you sustaining it, your Honor.

This is a somewhat interesting response in [87] response to question number 1, the juror indicates that he's generally disturbed by the news, he's yet to form an opinion. "However, we have an obligation to protect people who cannot protect themselves." In light of that response we would ask that this juror be struck for cause, your Honor.

MR. LESKO: Your Honor, that seems to me the answer reflects that he's willing to be open-minded and we can further on the last answer to the question to see –

THE COURT: I agree. The challenge is overruled.

* * * *

MR. DUBIN: Your Honor, I think that this prospective juror's response to the media exposure assumes guilt. She –

MR. LESKO: No objection.

THE COURT: Number 3 as well.

MR. DUBIN: I was getting to that.

THE COURT: Okay. Sustained.

[88] Hugh Sheridan.

MR. DUBIN: Again, your Honor, I just want to note that I also have Steven S-F-I-R-O-U-D-I-S, I'll put in a pile with Mr. Pilipshen and Edelman.

THE COURT: All right.

MR. LESKO: Your Honor, I, for some reason, don't have a copy of that. If I can look at Mr. Dubin's on that.

MR. DUBIN: Okay. In response to question 105, this juror indicates that he's had negative experiences with those from India and Indonesia many times, quote/unquote. In addition –

THE COURT: Calling some source of computer repair person.

MR. DUBIN: I understand that, your Honor. But we don't know – at the very least I'd like to inquire as to whether or not that's going to carry over into the defendants who are Indian and of Indonesian descent.

In addition, this juror indicates in response to question 117 that he believes all citizens should speak English.

THE COURT: Your clients speak English.

MR. DUBIN: Yes, they do. I would like to inquire whether or not he means solely English, it just seems that there's an issue here with either Indian, [89] Indonesians or foreigners.

THE COURT: I think it's more an issue of probably he didn't get his computer fixed. It's overruled.

MR. DUBIN: Okay. We'll follow up on those areas.

THE COURT: I have it marked.

MR. DUBIN: Thank you, your Honor.

MR. LESKO: I found my copy, Judge

THE COURT: Okay.

MR. DUBIN: I think we're on to Mary Ellen Sloan your Honor.

THE COURT: Correct.

MR. DUBIN: In response to question number 1, we can certainly follow up, she remembers correctly, she heard the case on the news, "I felt angry that such privileged people can treat others so cruelly and maliciously." That's precisely the kind of response that is the most chilling to us where she said I felt angry, immediately assuming the alleged behavior did indeed occur. We can ask her if she –

MR. LESKO: Your Honor, I guess the issue really is her narrative answer doesn't respond to the follow-up question which is inevitable, which is can you set aside any emotional response and be fair and impartial in this [90] case and I think we need to bring her back.

MR. DUBIN: We've seen it in numerous cases where the juror has a strong visceral reaction to

question number 1 and answers negatively to question number 3.

THE COURT: If there are no other indications that I see any problems with, I'll follow up with her on voir dire. Overruled.

MR. DUBIN: With regard to Margaret Small, who's next, she indicates on questions, 3, 4, 99, 128, 137 she says in response to question 3 when she says she cannot remain fair and impartial, that she was, quote, repulsed.

MR. LESKO: No objection.

THE COURT: Very well. Sustained.

Number 71 is Maribel Sonera.

MR. DUBIN: I'm going to question number 5 and go to the others. This juror indicates she asked for directions of someone from Indian descent and noticed he had his privates in his hand. That doesn't seem like an isolated issue where she was calling for technical issues, calling for help technical issues on her computer electronics equipment. It would seem that this might carry forward in terms of bias.

MR. LESKO: No objection.

THE COURT: I'm sorry?

MR. LESKO: No objection.

[91] THE COURT: Sustained.

MR. DUBIN: I can imagine that might be a bit of an experience.

Roberta Teer is next, 72 the.

THE COURT: Right.

MR. DUBIN: In response to question 134, of particular concern is this prospective juror was a juror in Judge Seybert's court and states that she keeps in contact via e-mail with the Court clerk from the case I was previously a juror on. He keeps me informed about sentencing, and developments regarding the case. I can't imagine it was an acquittal where there would be really nothing to follow-up on, number one; number two, it's in this courthouse and for a prospective juror to have ongoing contact with another judge's clerk while this case is progressing in the same courthouse is troubling to the defense.

MR. LESKO: Your Honor, if I may, is counsel finished?

MR. DUBIN: Yes.

THE COURT: I think so.

MR. LESKO: If I may, it's kind of an odd objection because this juror was clearly qualified and picked to serve on a previous jury. It's not uncommon for the jurors to follow up on the court and the government [92] with cases they've been involved with. In the sentencings, they're in the plural and as your Honor knows, very often the government uses cooperating witnesses. She can be referring to the sentences for the cooperators.

THE COURT: I've overruled it and I've marked it down. I don't know if it's a sign of progress, but I just finished my first package of Post-its.

MR. LESKO: Six more.

THE COURT: 73, Vincent Turano.

MR. DUBIN: Yes, your Honor. In addition to stating on two questions that he would have a difficult time remaining fair and impartial, this juror al-

so indicates on question 105 that he's had negative experiences with people from India and Indonesia and he's met rude people.

In addition to that, he, in response to question 1, he states that this was a quote/unquote, horrific crime. He doesn't say anything about reserving judgment. He just states "it appeared to be a horrific crime." He also states in response to with question 3 that his exposure to media and what was presented and again I think it's telling when the juror reiterates that on question 138.

THE COURT: He also indicates a hardship in [93] question 5. I'll sustain it.

74, George Winter.

MR. DUBIN: In response to question number 1, your Honor, this prospective juror indicates in response to his reaction to the media of which he identifies Newsday, the TV and radio quote/unquote, they seem guilty to me.

In addition, response to question number 4, prospective juror indicates difficulty remaining fair and impartial because the couple seems, quote, smug and above the law.

THE COURT: Sustained.

Asmok Vora.

MR. DUBIN: Yes, your Honor, Mr. Vora is of Indian descent, he indicated as much on his questionnaire and particularly in response to question 3, he indicates that the defendants have given a bad name to the East Indian community.

MR. LESKO: No objection, your Honor.

THE COURT: Sustained.

MR. DUBIN: Your Honor, I would like to simply follow up on Monday, in the event that we are going forward with Monday, with the answer to question number 1. I was unsure as to whether or not don't know, referred to the initial reaction, in response to question number 1.

[94] THE COURT: Okay. Any challenge is overruled, and I'll follow up.

* * * *

APPENDIX I

COURT EXHIBIT 1
10/23/07

Roberta	To: william_wall
<rtjeer@optonline.net>	@nyed.uscourts.gov
10/22/2007 11:30 PM	cc:
	bcc:
	Subject: jury selection

My husband suggested that I not think about things regarding the practice of jury selection and am certain he is right. However, I find myself thinking about it anyway.

With all the talk of how much people want to "get out of" jury service, it still manages to astonish me the sheer number of people that are willing to hide truths, out and out lie, or, at the very least, practice all forms of omission – all in the pursuit of getting onto a jury.

I found myself earlier today in an extreme minority. After hours left on our own, the jury pool became looser and looser in conversation. It became evident that I was in a minority when honestly stating that I preferred to not be chosen to sit on this, or any, jury.

I've always been a decent study of people and I sensed and then heard the lengths to which people were willing to go to be on a jury. It bothered me, in that, I foolishly and naively am a practitioner of being completely honest and forthcoming when being questioned (whether by questionnaire or a judge) for

suitability for a jury – while it is so obvious that so many others don't share that belief.

That leads me to mention a serious misgiving I had with at least one question on the questionnaire. The question regarding one's knowledge and or mind-set regarding the religion of Islam and its followers. I was honest (where as others said they knew enough to be dishonest) and declared that my knowledge came primarily from what I read and what I've learned from television. My husband has told me he believes that my answer would most certainly be taken as a negative to anyone looking to find people without bias as the media has so poorly portrayed much of the Muslim population.. Why should this bother me? I see no problem with reading reputable sources and viewing educational matter, about any subject, in a pursuit of knowledge and growth. As someone who is unanimously viewed by friends, co-workers, family, and acquaintances as a person who fights for religious tolerance, it surprised me that an answer that I (and possibly others) would give, regarding the media as a source of education, could be so roundly misconstrued. Anyone of marginal intelligence should be able to see past the hysteria caused by thoughtless and inaccurate stereotypes as portrayed on tv. Simply ask any Jew who has been listening to the wild ramblings of President Ahmedinejad if he/she believes everything you hear on television about religion.

At another point today, I also felt that complete and absolute honesty was easily, and even probably, taken as a ½ truth. In a case receiving a lot of attention (as I gathered by television cameras outside the court as well as the questions asked on the questionnaire) it surprised me the number of jurors I spoke to

willing to pretend that they "lived in a cave". I, not wanting to be chosen, could have easily lied and said that I read every bit of any article regarding this case. I, didn't. I chose the truth (a bad habit of mine, I suppose) and admitted to knowing of the case (who on Long Island, that is being honest, doesn't?) but I also was very very honest in reporting a disinterest in the details. My husband, ever the voice of reality and reason, told me that I simply sound dishonest by saying that. "Who's going to believe you saw a headline and first paragraph and then turned the page?" Well, it's the truth. So, my question would be, how many others would be viewed as dishonest for giving the MOST honest answer possible.

At some point I realized that completely candid answers were apt to sound like anything but. When asked about being able to be make a decision using only the law and the facts as presented, and further, being asked as to whether I had reached any preconceived assessment, I made a statement, something to the effect, that I have a difficult time making decisions regarding one's guilt or innocence. The fact is that I take that responsibility so incredibly seriously, that in all facets of my life I find this a difficult task. (Not impossible, it is my job, in fact, to make determinations such as these) I was fully aware, and at the time unconcerned, that my answer makes me a poor choice for a juror. However, in reflection, I know that if I were to ever find myself in a position where I was to be judged, I would hope that those doing the deciding would be as indecisive at the get go, open to new knowledge and even trouble by the weight of such a job, as I am.

My point, as convoluted as it seems, is that I just don't understand how choosing a jury can be fair

when people are lying to get on it and admitting to both bias and opinions of guilt while lying in wait to be chosen. I actually feel a sense of sadness as this trial begins because of my lack of faith in the jury selection system. And, as someone who has served on a very long trial where I was unfortunately impaneled with jurors who possessed many of the same "faults" as I have mentioned here, I am depressed about the seemingly impossible task of ever finding a completely fair jury.

My friends, co-workers, and husband all believe I am some kind of "super" juror because of my ability to be so relentlessly fair – but they haven't seen the reality of how jurors manipulate the system to be on a jury.

By the way, my answers, although not purposefully construed in any way to reach this conclusion, did in fact get me where I hoped to be – dismissed.

All that said, I found your staff and the many professionals I met earlier today, to be wonderful.

Best of luck,

Roberta Teer

APPENDIX J

[1] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

VARSHA MAHENDER SABHNANI and
MAHENDER MURLIDHAR SABHNANI,

Defendants.

Docket #CR-07-429

United States Courthouse
Central Islip, New York
October 23, 2007
9:30 a.m.

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE WILLIAM D. WALL,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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For Varsha Sabhnani

STEPHEN P. SCARING, ESQ.
JOSHUA DUBIN, ESQ.
For Mahender Sabhnani

* * * *

[306] * * * *

MR. SCARING: Thank you. This is, in my opinion, very specific. She says the jurors became looser, and they started talking. And she basically is saying – she says it: People are lying to get on the jury. They are not admitting to biases and opinions of guilt. She uses the words white lying and wait to be chosen.

This is pretty upsetting for me, because we had made a motion for a change of venue because of the enormous amount of publicity in this case. The publicity was particularly negative, and the kind of publicity that would cause people to, in fact, have a bias. The case has been labeled the "slave" case.

Ironically, on my way to the courtroom this morning, one of the reporters said to me: When are the [307] slave couples coming? We want to take their opinion.

This is a woman who has a great deal of respect for the court system. she has been communicating with the court system, as your Honor knows, that she had an experience of being on a jury before.

In terms of this not being conveyed, she says: It surprises me the number of jurors I spoke to willing to pretend that they live in a cave because they want to be chosen.

Your Honor, before this note was received, I made a note with regard to Juror No. 1 that we selected. This is the juror who is a train operator and, I'm sure, would love to spend six to eight weeks off the train, sitting here on Long Island. He says that he reads the Daily News. And then he said, in response to questions by your Honor whether or not he read anything about this, and he quickly said, no, no, no, I just scanned the papers.

Well, you can't scan the papers, the Daily News or the Post or Newsday, without knowing about this case. You can't possibly scan the tabloids without ever hearing about this case.

One of the clients was dubbed "Cruella." And it was "Cruella" which would be the lead headlines in the tabloids in the city.

I have in my notes that the witness clearly was [308] not being truthful and candid regarding his reading of the newspapers, simply because he wants to get on the case; that it was impossible for him not to have read anything. Yet your Honor asked him many questions. In fact, your Honor asked several questions of the witness, and he continuously said that he just scans it, referring to the newspaper.

So I do believe this is an issue that causes some concern as to a juror's fairness. I would say that your Honor is doing, I think, an impeccable job. In fact, I agree with the government that your Honor is doing a wonderful job in terms of trying to sort out these biases. However, it's impossible to do that if jurors

can simply come in here and lie to your Honor because they want to sit on the case.

THE COURT: That having been said, Mr. Scaring, I am to some extent bound by their answers. They are sworn as potential jurors. I've been trying to explore any areas of partiality or opinions they've formed will continue to do that.

If you've noticed today, I reminded each of the jurors there is nothing wrong with having read something in the paper. I want to make sure that they haven't formed an opinion. I feel strongly we've rooted out any potential problem jurors. We're up to 24.

[309] Let us try to complete our panel of 30. I'll continue asking all questions anyone wants me to do and continue exploring all areas. where I sensed any potential problems or troublesome juror, I've either granted the challenge for cause or excused them in my own right. And I will continue to do that. I'm confident we have a pretty good jury pool so far, and hopefully we'll continue that until number 30.

MR. SCARING: Again, I appreciate the efforts your Honor is making to get a fair jury. However, given the nature of this e-mail, I still have concerns.

My request – and I'll be brief, because I know your Honor wants to move the court. My request is that the jury panel, before we strike, be instructed or be informed that such an e-mail was received and that the Court has some concerns about that, and that if there is anyone on this panel who has not been candid, we would like you to tell us that.

I think the only way we can confront this is straight on, and I think that's the way to do that. That would be my request on behalf of Mr. Sabhnani.

THE COURT: I'll take that under consideration.

* * * *

[311] * * * *

THE COURT: I'll take the defendant's application under consideration. I'll speak with Judge Spatt. I've forwarded a copy of this to Judge Spatt, so the record is clear, not directly, through the secretary, since Judge Spatt doesn't access e-mail. But he has a copy of it, and he has reviewed this as well.

* * * *

APPENDIX K

[1] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

VARSHA MAHENDER SABHNANI and
MAHENDER MURLIDHAR SABHNANI,

Defendants.

Docket #CR-07-429

United States Courthouse
Central Islip, New York
October 24, 2007
9:30 a.m.

TRANSCRIPT OF TRIAL PROCEEDINGS

PORTIONS BEFORE THE HONORABLE
WILLIAM D. WALL, U.S.M.J.

PORTIONS BEFORE THE HONORABLE
ARTHUR D. SPATT, U.S.D.J.

APPEARANCES:

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For Varsha Sabhnani

STEPHEN P. SCARING, ESQ.
JOSHUA DUBIN, ESQ.
MATTHEW BRISSENDEN, ESQ.
For Mahender Sabhnani

* * * *

[513] * * * *

MR. DUBIN: Before we get to Mr. McCamphill, the defense seem to be gravely concerned about prospective jurors talking about the case. Mr. Guerrier said that he heard two people talking behind him, not only talking about the case, but two people saying that the defendants were "found guilty" in criminal courts and heard something about a knife.

THE COURT: I don't think he understood exactly what was happening. I've repeatedly instructed them not to discuss the case. I can't prevent it.

MR. DUBIN: I understand, your Honor. I understand a lot of this is out of your control. [514] What I would respectfully request your Honor to do, in light of the e-mail, the comments of this juror and some of the responses from the other jurors, the panel we have seated, I think there should be an inquiry for the seated jury as to whether or not they have heard people discussing the case.

THE COURT: They are excused until Monday morning.

MR. DUBIN: I'm not talking about today; I'm talking about when they get here.

THE COURT: You can take it up with Judge Spatt.

* * * *

[665] * * * *

MR. LESKO: * * * * [666] I should say that this bail package seems to be working. They seem to be safe themselves. In other words, given – there seems to be interest among the public in this case, but it doesn't seem to impact them in their homes, in terms of contacting them from their home.

* * * *

Supreme Court, U.S.
FILED
DEC 14 2010
OFFICE OF THE CLERK

No. 10-476

In the Supreme Court of the United States

VARSHA MAHENDER SABHNANI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly concluded that petitioner had not shown that pretrial publicity was so pervasive as to require the court to presume that publicity prejudicially affected the jury, even after a full voir dire and in the absence of any evidence of such prejudice.

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In the Supreme Court of the United States

No. 10-476

VARSHA MAHENDER SABHNANI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-86a) is reported at 599 F.3d 215. The memorandum and order of the district court denying petitioner's motion to change venue (Pet. App. 87a-96a) is not published in the Federal Supplement, but is available at 2007 WL 2769487. The memoranda and orders of the district court denying petitioner's post-trial motions are reported at 539 F. Supp. 2d 617 and 529 F. Supp. 2d 384.

JURISDICTION

The judgment of the court of appeals was entered on March 25, 2010. A petition for rehearing was denied on May 12, 2010 (Pet. App. 97a). On July 16, 2010, Justice Ginsburg extended the time within which to file a petition for a writ of certiorari to and including October 11,

2010, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a seven-week jury trial in the United States District Court for the Eastern District of New York, petitioner was convicted of two counts of forced labor, in violation of 18 U.S.C. 1589, 1594(a) and 2; two counts of harboring an alien involving serious bodily injury, in violation of 8 U.S.C. 1324(a)(1)(A)(iii), (a)(1)(A)(v)(II) and (a)(1)(B)(iii); two counts of peonage, in violation of 18 U.S.C. 1581(a), 1594(a) and 2; two counts of document servitude, in violation of 18 U.S.C. 1592(a), 1594(a) and 2; and separate counts of conspiracy to commit each of the substantive offenses. Pet. App. 2a, 17a-18a. Petitioner was sentenced to 132 months of imprisonment, to be followed by three years of supervised release; to pay a $25,000 fine and a special assessment of $1200; and to pay restitution. *Id.* at 2a. The court of appeals affirmed the conviction, vacated the restitution order, affirmed the remainder of the sentence, and remanded for recalculation of the amount of restitution. *Id.* at 1a-86a.

1. These convictions stemmed from petitioner's relationship with, and treatment of, two Indonesian domestic servants, Samirah and Enung, who were kept in a state of servitude and forced to labor in petitioner's residence. Pet. App. 3a-18a. On May 14, 2007, petitioner and her husband and co-defendant, Mahender Sabhnani, were arrested and held on a charge of committing forced labor. They were detained for three days and then released on bail. On May 22, 2007, they were arraigned on an indictment charging them with two counts of forced labor and two counts of harboring aliens. *Id.* at 88a.

The government and the defendants then engaged in extensive litigation on the issue of bail, including numerous written filings, oral argument, and other conferences in the district court, and an appeal and oral argument in the court of appeals. Pet. App. 89a-90a; *United States* v. *Sabhnani*, 493 F.3d 63, 66-74 (2d Cir. 2007). On August 21, 2007, the district court released the defendants to home confinement subject to certain conditions.[1] Pet. App. 90a.

Numerous media outlets reported the news of the defendants' initial arrest, the nature of the charges against them, and their first bail hearing. See Pet. App. 120a-124a, 128a-132a, 194a, 197a (media coverage between May 16, 2007, and May 18, 2007). *Newsday*, the daily Long Island newspaper, routinely covered the status of the protracted bail proceedings. See *id.* at 141a-145a, 148a-151a, 155a-165a, 170a-173a, 176a, 179a-184a (articles printed between May 20, 2007, and June 28, 2007). The Associated Press and, to a lesser extent, the *New York Times* occasionally reported on various aspects of the case, see *id.* at 134a-137a, 152a-154a, 164a-169a, 174a-175a, 177a-178a, 181a-182a, 208a-214a (articles printed between May 20, 2007, and June 28, 2007), as did various television, radio and internet outlets, see *id.* at 194a-207a, 215a-217a. One news outlet, the *New York Post*, in addition to reporting on the status of the case, portrayed the defendants in a particularly unflattering light: the newspaper dubbed petitioner "Cruella"

[1] Following the indictment, the district court had denied bail on the ground that the defendants were flight risks. On appeal, the Second Circuit upheld the finding that the defendants posed a flight risk, but vacated the detention order on the ground that there were bail conditions that could reasonably assure the defendants' presence at trial. *Sabhnani*, 493 F.3d at 68, 72-73, 75-78.

(*id.* at 19a), published dramatic accounts of the alleged crimes, and reported further allegations by the son of one of the victims, drawn from a statement read in court. See *id.* at 133a, 138a-140a, 146a-147a (three articles printed between May 19, 2007, and June 7, 2007).

2. The defendants moved for a change of venue, pursuant to Rule 21(a) of the Federal Rules of Criminal Procedure. They alleged that the pre-trial publicity surrounding their case was so pervasive and inflammatory that they could not receive a fair trial, and that the government was responsible for generating some of that pretrial publicity. Pet. App. 92a-93a; see, *e.g.*, *id.* at 221a-223a. In support of their motion, they submitted various newspaper articles and examples of radio and television coverage. *Id.* at 92a; see *id.* at 117a-217a, 232a-262a.

The district court denied the motion. Pet. App. 87a-96a. The court found that the defendants had "not shown that the pretrial publicity in this case [was] sufficiently prejudicial and inflammatory or that it [had] so permeated [the] district that a fair trial [could not] be had." *Id.* at 93a. The court further concluded that "the vast majority of media coverage ha[d] coincided with the court proceedings" and, thus, "amount[ed] to no more than the press reporting the news of the day." *Id.* at 95a. Indeed, the court noted, "requests for transfers of venue have been denied in cases far more notorious than [this one]," such as the World Trade Center bombing prosecution and the case against police officers accused of sodomizing Abner Louima with a toilet plunger. *Ibid.* (citing *United States* v. *Yousef*, 327 F.3d 56, 155 (2d Cir. 2004), and *United States* v. *Volpe*, 42 F. Supp. 2d 204, 218 (E.D.N.Y. 1999)). The court accordingly concluded that a "searching" and "thorough" voir dire would be the

appropriate way to prevent pretrial publicity from affecting the jury. *Id.* at 95a-96a (quoting *Yousef*, 327 F.3d at 155, and *Volpe*, 42 F. Supp. 2d at 218). As for the allegation that the government was responsible for generating the pretrial publicity, the court "f[ound] that the government did not purposefully generate negative publicity about the defendants" and that the government's statements had been properly made in the context of the bail hearings "to support [the government's] contentions" that the defendants presented a flight risk and a danger to the community. *Id.* at 93a. Indeed, the court concluded that the defendants' attorneys had contributed to the publicity, by their conduct resulting in "additional and unnecessary court proceedings," with attendant press coverage, and by attacking the victims in the media. *Id.* at 94a; see *id.* at 93a-95a & n.6.

The jury found petitioner and her husband guilty on all counts.[2]

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[2] Following the verdict, petitioner moved for a new trial, pursuant to Rule 33 of the Federal Rules of Criminal Procedure, and again raised the issue of prejudicial pretrial publicity. The district court denied the motion. *United States* v. *Sabhnani*, 539 F. Supp. 2d 617, 627-628 (E.D.N.Y. 2008). The court noted that petitioner did not seek to show that any juror had actually viewed any media coverage of the trial, contrary to the court's instructions; rather, petitioner contended that the jurors would likely have been exposed to the news stories given the amount of coverage. *Id.* at 628. The court noted that it had instructed the jury daily not to read *Newsday* at all, not to watch the Long Island news channel at all, and to avoid all media coverage or discussion about the case. The court also noted that it had specifically inquired about the jurors' exposure to particular news articles that the defense brought to its attention. The court concluded that there was no evidence that any juror had failed to follow the court's daily instructions, no evidence that any juror had been actually exposed to any publicity, and no evidence of prejudice to the defendants. *Ibid.* The district court separately denied a new trial based on the defendants' assertions of juror

3. The court of appeals affirmed in relevant part. Pet. App. 1a-86a.

The court of appeals agreed with the district court that the government's statements describing the nature of the crime and personal characteristics of the defendants during the bail proceedings were proper in the context in which they were made. Pet. App. 20a. The court also concluded that the "pretrial publicity here was not so pervasive and prejudicial as to have created a reasonable likelihood that a fair trial could not be conducted." *Id.* at 20a-21a. The court noted both that five months had passed between the most inflammatory news coverage and the start of trial, and that the majority of the press coverage had "tracked the frequent court proceedings in this case." *Id.* at 21a. The court reasoned that "[c]overage of actual developments in a criminal case generally will not rise to the level of prejudicial publicity that will warrant a venue change." *Ibid.* Finally, the court recognized the distinction between "mere exposure to pretrial publicity and actual prejudgment by the venire of the issues to be decided in the case." *Ibid.* The court noted that cases in which a presumption of prejudice may be applied "are very rare" (*id.* at 22a), and ultimately concluded that such a presumption did not apply in this case. *Id.* at 24a. The court also concluded that petitioner had failed to establish *actual* bias among the venire. *Id.* at 22a-23a. The court explained that "in the context of the appeal from a conviction involving crimes far more notorious than [the defendants'] case, * * * 'the key to determining the appropriateness of a change of venue is a searching voir dire.'" *Id.* at 23a (quoting *Yousef*, 327 F.3d at 155).

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misconduct. *United States* v. *Sabhnani*, 529 F. Supp. 2d 384 (E.D.N.Y. 2008).

And the court noted that the defendants did not challenge the sufficiency of the voir dire on appeal. *Ibid.*

ARGUMENT

Petitioner contends that review is warranted here because pretrial publicity created a presumption of prejudice such that she was denied an impartial jury. Petitioner principally relies on this Court's decision in *Skilling* v. *United States*, 130 S. Ct. 2896 (2010), which held that negative publicity before the defendant's trial did *not* raise a presumption of jury prejudice. According to petitioner, *Skilling* justifies further review here because it "clarified" the circumstances in which pretrial publicity requires such a presumption to attach. Pet. 17. That contention lacks merit, because this Court in *Skilling* set out no new rule but simply applied established law to the facts of that case. Because the decision below is correct and does not conflict with *Skilling*, with any other decision of this Court, or with any decision of another court of appeals, further review is not warranted.

1. "The Sixth Amendment secures to criminal defendants the right to trial by an impartial jury." *Skilling*, 130 S. Ct. at 2912-2913. As one means of protecting that right, Rule 21 of the Federal Rules of Criminal Procedure provides that "[u]pon the defendant's motion, the court must transfer the proceeding * * * to another district if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there." Fed. R. Crim. P. 21(a).

If the district court denies transfer under Rule 21 and the defendant seeks to establish on appeal that pretrial publicity deprived him of a fair trial, the defendant must ordinarily establish that, despite the protections

afforded during the jury-selection process, publicity actually affected the jury that was seated. Petitioner contends that in this case such prejudice should be presumed simply from the volume and nature of the pretrial publicity. But this Court's decisions have made clear that a presumption of prejudice could apply only in "the extreme case." *Skilling*, 130 S. Ct. at 2915. Indeed, this Court has seen only *one* case in 50 years in which the unique circumstances justified reversal based on pretrial publicity alone. Even in cases involving extraordinary pretrial publicity *and* other circumstances affecting the trial itself, this Court has presumed prejudice only where a "conviction [was] obtained in a trial atmosphere that had been utterly corrupted by press coverage." *Murphy* v. *Florida*, 421 U.S. 794, 798 (1975). The pretrial publicity in this case does not approach that level.

The sole case in which this Court has reversed a conviction based *only* on pretrial publicity, without proof of an actual effect on the jury, is *Rideau* v. *Louisiana*, 373 U.S. 723 (1963). Rideau was interrogated in his jail cell, without counsel, by the local sheriff. He confessed to kidnapping and murdering a bank employee. A 20-minute film of the interrogation and confession aired three times on local television, before audiences of 24,000, 53,000, and 20,000 viewers, in a community of only 150,000 people. *Id.* at 723-727. The Court explained that "to the tens of thousands of people who saw and heard it," the televised interview "in a very real sense *was* Rideau's trial—at which he pleaded guilty." *Id.* at 726. The Court held that due process "required a trial before a jury drawn from a community of people who had not seen and heard Rideau's televised 'interview.'" *Id.* at 727.

Petitioner's other cases involved media presence in the courtroom, not the effect of conventional media coverage. In *Estes* v. *Texas*, 381 U.S. 532 (1965), the Court held that the defendant was denied due process by the "televising and broadcasting of his trial." *Id.* at 535. The media invaded the courtroom, causing "considerable disruption," and filmed large portions of the trial as well as a pretrial hearing involving, inter alia, jury selection. *Id.* at 536, 550-551. The Court concluded that the media had "bombard[ed] * * * the community with the sights and sounds of" the pretrial hearing, which "led to considerable disruption" and denied the defendant the "judicial serenity and calm to which [he] was entitled." *Id.* at 536. This Court therefore reversed the conviction without assessing the prejudicial impact on individual jurors, reasoning that the effect of television on the proceedings could be presumed and justify reversal under what the Court called "the rule announced in *Rideau*." *Id.* at 550. *Estes* thus dealt not with pretrial publicity alone—indeed, a change of venue had been granted on that basis, *id.* at 536—but with the "circus atmosphere" at trial. *Murphy*, 421 U.S. at 799.

Finally, in *Sheppard* v. *Maxwell*, 384 U.S. 333 (1966), the media not only reported numerous prejudicial rumors and accusations regarding the defendant, who was accused of murdering his pregnant wife, but also was allowed to invade the courtroom and interfere with the trial itself. *Id.* at 342-345, 356-357. The Court found that "bedlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom," and that the trial court failed to take adequate steps to avoid the "carnival atmosphere at trial." *Id.* at 355, 358-363; see *Murphy*, 421 U.S. at 798 (proceedings

in *Estes* and *Sheppard* "were entirely lacking in the solemnity and sobriety to which a defendant is entitled").

As is clear from this Court's precedents, "pretrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial." *Nebraska Press Ass'n* v. *Stuart*, 427 U.S. 539, 554 (1976); see also *Sheppard*, 384 U.S. at 354, 358 (noting that "months [of] virulent publicity about Sheppard and the murder" did not alone deny due process; due process issue arose from the "carnival atmosphere" that pervaded the trial). Indeed, the Court recognized in *Skilling* that its decisions in *Rideau*, *Estes*, and *Sheppard* "cannot be made to stand for the proposition that juror exposure to * * * news accounts of the crime * * * alone presumptively deprives the defendant of due process." 130 S. Ct. at 2914 (quoting *Murphy*, 421 U.S. at 798-799). Thus, to the extent that a defendant can ever establish presumptive prejudice from pretrial publicity alone, he has an "extremely high" burden, *United States* v. *McVeigh*, 153 F.3d 1166, 1182 (10th Cir. 1998), cert. denied, 526 U.S. 1007 (1999), because a presumption of prejudice is only "'rarely' applicable and is reserved for an 'extreme situation,'" *United States* v. *Campa*, 459 F.3d 1121, 1143 (11th Cir. 2006) (en banc) (quoting *Mayola* v. *Alabama*, 623 F.2d 992, 997 (5th Cir. 1980), cert. denied, 451 U.S. 913 (1981)), cert. denied, 129 S. Ct. 2790 (2009). Accord *United States* v. *Childress*, 58 F.3d 693, 706 (D.C. Cir. 1995) (presumption is "reserved for only the most egregious cases"), cert. denied, 516 U.S. 1098 (1996); see also *Dobbert* v. *Florida*, 432 U.S. 282, 303 (1977) ("Unfairness of constitutional magnitude" will not be presumed "in the absence of a 'trial atmosphere * * * utterly corrupted by press coverage.'") (quoting *Murphy*, 421 U.S. at 798).

2. Contrary to petitioner's contention (Pet. 17), *Skilling* did not "clarif[y]" the circumstances in which a presumption of prejudice applies; nor did the Court establish a new test (Pet. 18-21) for courts of appeals to apply when evaluating potential prejudice from pretrial publicity. Rather, the Court in *Skilling* followed its longstanding approach to evaluating alleged prejudice from pretrial publicity and concluded that the facts in *Skilling* did not warrant a presumption of prejudice—just as it has concluded in every pretrial-publicity case since *Rideau*. See, *e.g.*, *Murphy*, *supra*; *Patton* v. *Yount*, 467 U.S. 1025 (1984); *Mu'Min* v. *Virginia*, 500 U.S. 415 (1991).

In *Skilling*, the Court initially noted that reliance on *Estes* and *Sheppard* was "particularly misplaced," because those cases "involved media interference with courtroom proceedings *during* trial."[3] 130 S. Ct. at 2915 n.14. The only relevant authority on presumed prejudice therefore was *Rideau*, which the Court found readily distinguishable. The most obvious difference, the Court noted, was the "size and characteristics of the community" in which Skilling's crime was committed (*i.e.*, Houston, "the fourth most populous city in the Nation"), as compared to the community of 150,000 in which Rideau's crime was committed. *Id.* at 2915. The Court also recognized that, while the news accounts about Skilling "were not kind, they contained no confession or other blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight." *Id.* at 2916. In essence, no "evidence of the smoking-gun variety" threatened to cause the jury to prejudge Skilling's culpability. *Ibid.*

[3] Like the defendant in *Skilling*, petitioner here does not assert that news coverage affected the jury after it was empanelled.

The Court also noted that Skilling's trial took place four years after the collapse of Enron, and that Skilling was acquitted on some charges. *Ibid.* Considering those facts, the Court concluded that Skilling's prosecution "share[d] little in common with those in which * * * a presumption of juror prejudice" has attached. *Ibid.* The Court re-emphasized that the media coverage "did not present the kind of vivid, unforgettable information we have recognized as particularly likely to produce prejudice," and noted that the "size and diversity" of the community in which the crime took place "diluted the media's impact." *Ibid.*

3. The court of appeals' decision does not conflict with *Skilling* or any other decision of this Court.[4] The court of appeals applied the appropriate standard, and its conclusions—that the complained-of pretrial publicity "was not so pervasive and prejudicial as to have created a reasonable likelihood that a fair trial could not be conducted" (Pet. App. 21a) and that the record "does not establish that the venire had prejudged the [defendants'] case" (*id.* at 22a)—were correct. In the context of this factual record, it was not necessary for the court of appeals' decision to address expressly every one of the factors this Court thereafter identified in differentiating *Skilling* from *Rideau*, nor would re-examination of this case in light of *Skilling* change the outcome. Further review is not warranted.

"A presumption of prejudice * * * attends only the extreme case," *Skilling*, 130 S. Ct. at 2915, and peti-

[4] Petitioner does not contend that the court of appeals' decision conflicts with any decision of another court of appeals. Cf. pp. 17-21, *infra* (discussing petitioner's contention that there is a circuit conflict on an issue never addressed by the court of appeals here).

tioner's case is hardly "extreme."[5] To the contrary, this case involves none of the extraordinary facts—*e.g.*, a televised jailhouse confession that turned the ensuing trial into a "kangaroo court proceeding[ ]," *Rideau*, 373 U.S. at 726—that led this Court to hold, in a single case nearly 50 years ago, that prejudice could be presumed from pretrial publicity alone.[6] *Ibid.*

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[5] Indeed, venue changes have been denied in far more notorious cases. See Pet. App. 95a (citing cases); *United States* v. *Lindh*, 212 F. Supp. 2d 541, 549-551 (E.D. Va. 2002) (John Walker Lindh, American captured fighting for the Taliban); see also *Skilling*, 130 S. Ct. at 2914 n.12 (discussing the notoriety of the defendant in *Murphy*, a jewel thief and murderer).

[6] Petitioner is incorrect in suggesting (Pet. 24-25) that her reliance on Rule 21 in addition to the Due Process Clause either bolsters her claim of reversible error or makes this case a more suitable vehicle for plenary review by this Court. Petitioner's premise (Pet. 25) is that "Rule 21 is more protective than the Due Process Clause," for which proposition he cites statements in *Marshall* v. *United States*, 360 U.S. 310 (1959) (per curiam), in Chief Justice Burger's concurring opinion in *Murphy* v. *Florida*, 421 U.S. 794, 804 (1975), and in the dissenting opinion in *Rideau*, see 373 U.S. at 728 (Clark, J., dissenting) (explaining that he would reverse in a federal case because he did "not believe it within the province of law enforcement officers actively to cooperate in activities which tend to make more difficult the achievement of impartial justice"). But even if Rule 21 *permits* a district court to grant a venue transfer when the Due Process Clause does not require it, the district court declined to order such a transfer here, and nothing in the cases petitioner cites establishes that the district court abused its discretion or that the court of appeals' application of the deferential standard of review to the facts of this case warrants further consideration in this Court. See generally *Skilling*, 130 S. Ct. at 2913 n.11 ("As the language of [Rule 21] suggests, district-court calls on the necessity of transfer are granted a healthy measure of appellate-court respect."). And even if discretion under the Rule were abused, petitioner cannot plausibly claim that a violation of that federal rule of procedure is subject to an irrebuttable presumption of prejudice. See Fed. R. Crim. P. 52(a); cf. *United States* v. *Mechanik*, 475 U.S. 66, 71-72 (1986); *United*

First, petitioner does not—and cannot—allege that media representatives "overran the courtroom and 'bombard[ed] * * * the community with the sights and sounds of'" the court proceedings, *Estes*, 381 U.S. at 538, or that publicity created a "carnival atmosphere" that pervaded the trial, *Sheppard*, 384 U.S. at 358. Petitioner's reliance on *Estes* and *Sheppard* thus is "particularly misplaced." *Skilling*, 130 S. Ct. at 2915 n.14.

Second, the jury was selected from the broad and diverse Eastern District of New York, not from a small jurisdiction (like the single parish in *Rideau*) in which pretrial publicity truly could saturate the jury pool. While petitioner states that the crime occurred in a "small suburban community" and that the trial took place "more than 50 miles from the federal courthouses in Manhattan and Brooklyn," Pet. 21-22 n.3, the relevant fact is that the *venire* was drawn from the entire Eastern District—*i.e.*, Long Island (Nassau and Suffolk Counties) and the New York City boroughs of Brooklyn,

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States v. *Lane*, 474 U.S. 438, 449 (1986). In any event, the federal courts of appeals have read Rule 21(a) as consistent with this Court's constitutional venue jurisprudence. See *United States* v. *Rodriguez*, 581 F.3d 775, 788 (8th Cir. 2009), cert. denied, 131 S. Ct. 413 (2010); *United States* v. *Rewald*, 889 F.2d 836, 862 n.27 (9th Cir. 1989), cert. denied, 498 U.S. 819 (1990). Compare *Sheppard*, 384 U.S. at 363 (explaining that "where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should * * * transfer [the case] to another [district] not so permeated with publicity"), with Fed. R. Crim. P. 21(a) (directing trial court to transfer case if prejudice exists such that "the defendant cannot obtain a fair and impartial trial"). By contrast, neither the Court's opinion in *Marshall* nor Chief Justice Burger's concurrence in *Murphy* dealt with Rule 21 at all. Moreover, the Court in *Marshall* reversed a conviction based on the *actual* "exposure of jurors to information of a character which the trial judge ruled was so prejudicial it could not be directly offered as evidence." 360 U.S. at 312.

Queens, and Staten Island (Kings, Queens, and Richmond Counties)—whose total population is more than 8 million people. See 28 U.S.C. 112(c); United States Census Bureau, *No. CO-EST2009-01-36, Annual Estimates of the Resident Population for Counties of New York: April 1, 2000 to July 1, 2009* (Mar. 2010), http://www.census.gov/popest/counties/tables/CO-EST2009-01-36.xls. Indeed, four of those five counties (all but Richmond) are among the Nation's 30 largest by population. Just as in *Skilling* (in which the trial took place in Houston), the "large, diverse pool of potential jurors" refutes "the suggestion that 12 impartial individuals could not be empanelled." *Skilling*, 130 S. Ct. at 2915; accord *Mu'Min*, 500 U.S. at 429 (potential for prejudice mitigated by the size of the "metropolitan Washington [D.C.] statistical area, which has a population of over 3 million, and in which, unfortunately, hundreds of murders are committed each year").

Third, despite petitioner's efforts (Pet. 19-20) to characterize the publicity in this case as "unrelenting," and including "superheated rhetoric" about crimes that are "likely to evoke an intensely visceral response," the facts show otherwise. The media coverage "contained no confession," no "evidence of the smoking-gun variety," and no "blatantly prejudicial information of the type [New York] readers or viewers could not reasonably be expected to shut from sight." *Skilling*, 130 S. Ct. at 2916; cf. *Stroble* v. *California*, 343 U.S. 181, 192 (1952) (no prejudice despite newspapers discussing the "manhunt" for accused murderer of six-year old and characterizing defendant as a "werewolf," "fiend," and "sex-mad killer"). True, some of the articles were "not kind." *Skilling*, 130 S. Ct. at 2916. But the principal coverage in petitioner's case "amount[ed] to no more than the

press reporting the news of the day." Pet. App. 95a; accord *id.* at 21a ("[T]he record here indicates, as the district court found, that most of the press coverage tracked the frequent court proceedings in this case."). The facts to which petitioner objects, about her wealth and the nature of her crimes, were relevant to the bail and home-detention proceedings and were reported in that context. The routine, if colorful, news coverage of filings and hearings in the case hardly rivals the volume of coverage even in *Skilling*, which extended even to the local newspaper's sports section and pet column. 130 S. Ct. at 2911 n.8.

Fourth, unlike *Rideau*, in which the defendant's trial began less than eight weeks after his confession was repeatedly aired on television, see 373 U.S. at 1420 (Clark, J., dissenting), several months separated the bulk of the most inflammatory press coverage (which followed petitioner's arrest and initial appearance) from petitioner's trial. Cf. *Murphy*, 421 U.S. at 802 (rejecting claim that jury was influenced where the majority of news articles concerning defendant appeared seven months before jury selection). As in *Skilling*, the "decibel level of media attention diminished" in the months following petitioner's arrest. 130 S. Ct. at 2916.

Finally, petitioner makes too much of her conviction on all charged counts (Pet. 17, 19, 21, 31). In *Skilling*, in which the jury had acquitted on several counts, this Court observed that "[i]t would be odd for an appellate court to presume prejudice in a case in which jurors' actions run counter to that presumption." 130 S. Ct. at 2916. But petitioner's converse proposition does not follow: the mere fact of conviction does not affirmatively *support* a presumption that the jury was prejudiced. Conviction on all counts is not evidence of bias when the

defendant is, in fact, proved guilty beyond a reasonable doubt. That was the case here: petitioner's guilt was proved by "credible" and "compelling direct evidence" that was corroborated by other witnesses. *United States* v. *Sabhnani*, 539 F. Supp. 2d 617, 625, 627 (E.D.N.Y. 2008); see *id.* at 620-622, 624-626.

As the Court reiterated in *Skilling*, an event's "[p]rominence does not necessarily produce prejudice, and juror *impartiality* * * * does not require *ignorance*." 130 S. Ct. at 2914-2915. See also *Irvin* v. *Dowd*, 366 U.S. 717, 722 (1961) (explaining that jurors are not required to be "totally ignorant of the facts and issues involved"; "scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case"). Petitioner has shown at most that her case was the subject of public attention; she cannot show that it was the extreme situation in which every one of the millions of potential jurors must be presumed to be prejudiced beyond the ability of voir dire to discover (Pet. 24).

The court of appeals did not misapply this Court's precedents in declining to afford such a presumption on these facts. Nor did the Court's decision in *Skilling* cast any doubt on the court of appeals' intensely fact-bound analysis; the court of appeals rejected petitioner's claim for reasons quite similar to those this Court gave in rejecting Skilling's claim. Accordingly, this Court should reject petitioner's suggestion (Pet. 30-32) that the Court grant the petition, vacate the judgment, and remand for further consideration in light of *Skilling*.

4. Petitioner suggests (Pet. 26-30) that this Court should grant review to consider whether a presumption of jury prejudice is rebuttable. That issue was not addressed in either of the lower courts, because both

courts correctly found that this case does not call for the application of such a presumption at all. There is no occasion for this Court to address that issue in the first instance. Even if this Court were to address the question, petitioner still would not be entitled to reversal.

As petitioner notes (Pet. 26), this Court granted certiorari in *Skilling* to decide (inter alia) whether a presumption of prejudice may be rebutted. Pet. for Cert. at i, *Skilling*, *supra* (No. 08-1394). But that case, unlike this one, presented a plausible vehicle to address the question: in *Skilling* the court of appeals had concluded that a presumption of prejudice *did* apply, and then proceeded to hold that the presumption could be, and had been, rebutted. See *United States* v. *Skilling*, 554 F.3d 529, 559, 561-565 (5th Cir. 2009), aff'd in relevant part on other grounds, 130 S. Ct. 2896 (2010). The government explained in its brief in opposition to certiorari that the court of appeals had erred in applying the presumption in the first place, and that *Skilling* therefore would not be an appropriate vehicle for this Court to consider whether the presumption was rebuttable. U.S. Br. in Opp. at 13-17, *Skilling*, *supra* (No. 08-1394). And that proved to be the case: this Court concluded that no presumption of prejudice was warranted, and it therefore did not reach the question on which it had granted certiorari. See 130 S. Ct. at 2917 & n.18; accord *id.* at 2952-2953 (Sotomayor, J., concurring in part and dissenting in part).

In this case, by contrast, no court has addressed the question whether a presumption, if applied, could be rebutted. Indeed, the court below has never decided that question in any case. See Pet. 26-27. And no court has had the opportunity to evaluate the government's evidence that the thorough voir dire in this case did, in

fact, ensure petitioner an unbiased jury. Indeed, this Court should not decide the question whether the presumption of prejudice is so strong that *no* voir dire could cure it without having before it a developed record and reasoned decision on what curative efforts were made in the particular case. This case involved a thorough and searching voir dire, involving a 38-page juror questionnaire and three days of jury selection, see Gov't C.A. Br. 62, which the court of appeals did not have occasion to address because it concluded that no presumption of prejudice should apply.

In any event, an irrebuttable presumption cannot be justified under this Court's cases, and petitioner significantly overstates the support in the lower courts for such a rule. The mere fact that jurors were exposed to pretrial publicity is not itself a constitutional violation, see, *e.g.*, *Skilling*, 130 S. Ct. at 2914; *Murphy*, 421 U.S. at 798-799, unless the exposure actually affects the jury's impartiality. And even if, in an extreme case, the defendant can be relieved of the burden of demonstrating such an effect, no constitutional violation has occurred if the government can show by satisfactory proof that, in fact, the jury was not affected. The trial court is in the best position to evaluate that proof in the first instance, through voir dire. See, *e.g.*, *Mu'Min*, 500 U.S. at 427 (emphasizing that, "[p]articularly with respect to pretrial publicity," "primary reliance on the judgment of the trial court" to determine juror bias "makes good sense"). Thus, although the Court has occasionally suggested that a presumption of prejudice means that jurors' claims of impartiality "should not be believed," *id.* at 429, those statements are properly read to mean only that when pretrial publicity is particularly intense, the district court should conduct a more searching inquiry

than usual and closely scrutinize juror claims of impartiality. Cf., *e.g.*, *Neder* v. *United States*, 527 U.S. 1, 8 (1999) (a rule of "automatic reversal," without an inquiry into actual prejudice, is appropriate "only in a very limited class of cases"). Petitioner offers no challenge to the adequacy of voir dire here.

The appellate cases petitioner cites (Pet. 27 nn.6-7) likewise do not support a conclusive presumption of prejudice here. Indeed, most of the cases petitioner cites applied no presumption at all, rejected the pretrial-publicity claim, and denied relief. See, *e.g.*, *United States* v. *Higgs*, 353 F.3d 281, 307-308 (4th Cir. 2003), cert. denied, 543 U.S. 999 (2004); *McVeigh*, 153 F.3d at 1181-1183; *Flamer* v. *Delaware*, 68 F.3d 736, 754-755 (3d Cir. 1995) (en banc) (Alito, J.), cert. denied, 516 U.S. 1088 (1996); *People* v. *Leonard*, 157 P.3d 973, 993-995 (Cal.), cert. denied, 552 U.S. 1013 (2007); see also *DeRosa* v. *State*, 89 P.3d 1124, 1136 (Okla. Crim. App. 2004) ("DeRosa does not contend that his case is one of the rare cases where media influence was so pervasive and prejudicial that prejudice must be presumed."), cert. denied, 543 U.S. 1063 (2005). And in the only case petitioner cites in which the court granted relief on a pretrial-publicity claim, the Ninth Circuit did not specifically address whether the presumption of prejudice could be rebutted in an appropriate case, perhaps because the relevant facts regarding pretrial publicity were not included in the record and the Ninth Circuit relied on the state supreme court's findings. See *Daniels* v. *Woodford*, 428 F.3d 1181, 1210-1211 (2005), cert. denied, 550 U.S. 968 (2007); cf. *Hamilton* v. *Ayers*, 583 F.3d 1100, 1107 (9th Cir. 2009) (juror was exposed to media coverage during trial, but presumption of prejudice was rebutted); *United States* v. *Keating*, 147 F.3d

895, 900 (9th Cir. 1998) (jurors were exposed to extrinsic evidence during trial, but presumption of prejudice was rebutted). The only circuits to have squarely addressed the question hold that the presumption *is* rebuttable. Pet. 26-27 n.5. Thus, even if this case presented the question whether a presumption of prejudice is rebuttable, petitioner cannot establish a circuit conflict warranting plenary review on that issue.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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No. 10-476

In the Supreme Court of the United States

VARSHA MAHENDER SABHNANI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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REPLY BRIEF FOR PETITIONER

Throughout the five months between petitioner's arrest and trial, the local media reported on this sensational case relentlessly, describing petitioner as a "slaveholder" who had committed "monstrous" acts of "torture." See Pet. 3-11 & n.1. In affirming the district court's denial of petitioner's venue-change motion, the court of appeals rejected a presumption of jury prejudice with the conclusory statement that "the character of the publicity" did not "warrant[] the conclusion that a presumption or inference of generalized prejudice was appropriate." Pet. App. 24a. The court of appeals failed to consider the factors that, as this Court has since made clear in *Skilling* v. *United States*, 130 S. Ct. 2896 (2010), are relevant in determining whether prejudice should be presumed, including whether the pre-trial publicity is "vivid" and "unforgettable," *id.* at 2916. Those factors compel a presumption of prejudice in this case.

The government's principal defense of the decision below is that the court of appeals "applied the appropriate standard" and "rejected petitioner's claim for reasons quite similar to those this Court gave in rejecting Skilling's claim." Br. in Opp. 12, 17. But even the most casual comparison of the two decisions conclusively refutes those assertions. Nor does the government offer any other persuasive reason why the Court should not grant certiorari and either set the case for plenary review or, at the very least, vacate the judgment below and remand for further consideration in light of *Skilling*.

A. The Court Should Grant Certiorari To Decide Whether A Presumption Of Prejudice Arises When Pervasive Pre-Trial Publicity Is Vivid And Unforgettable, The Trial Swiftly Follows The Arrest, And The Defendant Is Found Guilty On All Counts.

As the petition explains (at 18-19), *Skilling* makes clear that adverse pre-trial publicity creates a presumption of jury prejudice when some combination of the following circumstances are present: the news reports included "blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight"; the defendant's "trial swiftly followed a widely reported crime"; there was no "large, diverse pool of potential jurors"; and "the jury's verdict did not undermine in any way the supposition of juror bias." *Skilling*, 130 S. Ct. at 2915-2916. As the petition also explains (at 19-24), these circumstances were absent in *Skilling* but—with one partial exception—are present here, and the court of appeals failed to take account of them. Finally, the petition explains (at 24-25) that a presumption of prejudice is especially warranted because petitioner invoked Federal Rule of Criminal Procedure 21(a), a more favorable standard than the Due Process standard the Court applied in prior cases. The government takes issue with each of these points, but its arguments are insubstantial.

1. The government first argues that "*Skilling* did not 'clarif[y]' the circumstances in which a presumption of prejudice applies." Br. in Opp. 11 (quoting Pet. 17). But that is exactly what *Skilling* did. The Court did not merely "conclude[] that the facts in *Skilling* did not warrant a presumption of prejudice."

Ibid. It systematically catalogued, for the first time, the factors that had led the Court to presume jury prejudice in prior cases, and it then judged the facts of *Skilling* against these criteria. *Skilling*, 130 S. Ct. at 2915-2916. The government asserts that these factors do not amount to a "test" for lower courts "to apply when evaluating potential prejudice from pretrial publicity," Br. in Opp. 11, but that is precisely how lower courts have understood *Skilling*.[1]

2. Tacitly rebutting its own assertion that *Skilling* did not clarify the factors that bear upon presumed prejudice, the government goes on to analyze those very factors and to argue that they weigh against presuming prejudice here. Br. in Opp. 12-17. But its analysis is fundamentally flawed.

First, the government contends (Br. in Opp. 15-16) that the media coverage of petitioner did not contain any "blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight." *Skilling*, 130 S. Ct. at 2916. That contention cannot be accepted. The media reported allegations—and published gruesome photographs purporting to show—that petitioner had committed "absolutely monstrous" acts of "incompre-

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[1] See *United States* v. *Hasan*, ___ F. Supp. 2d ___, No. 2:10cr56, 2010 WL 4282015, at *37 (E.D. Va. Oct. 29, 2010) ("[I]n the *Skilling* case[,] *** the Supreme Court emphasized several factors *** in deciding if a jury venire could not be impartial."); *United States* v. *Mitchell*, ___ F. Supp. 2d ___, No. 2:08CR125DAK, 2010 WL 3222416, at *3 (D. Utah Aug. 16, 2010) ("[T]he Court [in *Skilling*] analyzed the issue by focusing on several factors relevant to a determination of presumed prejudice."); *State* v. *Hayes*, No. CR070241859, 2010 WL 3328076, at *2 (Conn. Super. Ct. July 28, 2010) ("*Skilling* identifies four relevant factors for judicial consideration").

hensible brutality and violence and inhumanity," including "modern day slavery" and "physical torture," that the police considered the "worst *** they've ever seen." Pet. 19-20. If that publicity is not "vivid, unforgettable," and "memorable," and "likely imprinted indelibly in the mind[s]" of those exposed to it, *Skilling*, 130 S. Ct. at 2916, then no publicity is.

The government endorses the court of appeals' statement that "'most of the press coverage tracked the frequent court proceedings in this case.'" Br. in Opp. 16 (quoting Pet. App. 21a). But like the court of appeals, the government fails to explain why articles portraying the Sabhnanis as a "millionaire slave couple," and petitioner's actions as "torture," are any less vivid and unforgettable simply because they happen to have been prompted by a proceeding in the case. Like the court of appeals, moreover, the government cites no authority to support this view. There *is* no support for it, either in logic or in law.

The government also says that the news coverage here "hardly rivals the volume of coverage even in *Skilling*." Br. in Opp. 16. For this factor, however, what matters is not the "volume" of coverage but its character and likely effect. And the "news stories about Enron contained nothing resembling the horrifying information rife in reports about" petitioner. *Skilling*, 130 S. Ct. at 2922.

Second, the government argues (Br. in Opp. 16) that petitioner's trial did not "swiftly follow[] a widely reported crime." *Skilling*, 130 S. Ct. at 2916. In *Skilling*, the Court concluded that this factor weighed against presuming prejudice because "over four years elapsed between Enron's bankruptcy and Skilling's trial." *Ibid.* The government says that the same conclusion is warranted in this case because

petitioner's trial commenced five months after her arrest. Br. in Opp. 16; see Pet. 20-21. But surely the five-month interval between arrest and trial here is more like the intervals of two months in *Rideau* v. *Louisiana*, 373 U.S. 723 (1963), see Br. in Opp. 16, and three months in *Sheppard* v. *Maxwell*, 384 U.S. 333 (1966), see Pet. 21, than like the more-than-48-month interval in *Skilling*. More important, unlike in *Skilling*, and contrary to the government's assertion, the "'decibel level of media attention'" did not "diminish[]" as petitioner's trial approached. Br. in Opp. 16 (quoting *Skilling*, 130 S. Ct. at 2916); see Pet. 9-11 & n.1.

Third, the government discounts (Br. in Opp. 16-17) the factor this Court found to be "of prime significance" in *Skilling*: that the jury handed the government an "overwhelming victory" by finding both petitioner and her husband guilty on all 12 counts. *Skilling*, 130 S. Ct. at 2916. According to the government, "the mere fact of conviction does not affirmatively support a presumption that the jury was prejudiced." Br. in Opp. 16 (emphasis omitted). But no one contends that a presumption of prejudice follows from the "mere" fact of conviction. It is the *combined* effect of the considerations identified in *Skilling*—the "memorable," "indelibl[e]," "vivid," and "unforgettable" nature of the pre-trial publicity, 130 S. Ct. at 2916, the trial's temporal proximity to that publicity, *and* the jury's decision to convict on every one of the 24 counts (12 for each defendant)—that compels the conclusion that jury prejudice should be presumed here.[2]

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[2] The government places heavy reliance (Br. in Opp. 11, 14) on the fact that *Estes* v. *Texas*, 381 U.S. 532 (1965), and *Sheppard*

3. The government also argues that petitioner's "reliance on Rule 21" neither "bolsters her claim of reversible error" nor "makes this case a more suitable vehicle for plenary review." Br. in Opp. 13 n.6. The government's basic position seems to be that Rule 21 is not more protective than the Due Process Clause and that, instead, the two standards are identical. If that were so, however, there would have been no reason for the Court in *Skilling* to reserve the question whether the defendant was entitled to a change of venue under Rule 21. See *Skilling*, 130 S. Ct. at 2913 n.11; see also *id.* at 2942 (Alito, J., concurring in part and concurring in the judgment); *id.* at 2953 n.9 (Sotomayor, J., concurring in part and dissenting in part). Instead, the answer to that question would necessarily have followed from the Court's holding that due process did not require a transfer. This point is made quite clearly in the petition (at 25), and the government has no response to it.

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involved both "extraordinary pretrial publicity *and* other circumstances affecting the trial itself." *Id.* at 8; see *Skilling*, 130 S. Ct. at 2914. But the Court itself placed little reliance on that fact in *Skilling*, relegating it to a brief footnote. *Skilling*, 130 S. Ct. at 2915 n.14. The government also contends (Br. in Opp. 14-15) that "the size and characteristics of the community in which the crime occurred," *Skilling*, 130 S. Ct. at 2915, weigh against a presumption of prejudice here. But the government has no answer to petitioner's argument that the absence of a "broad and diverse" jury pool (Br. in Opp. 14) cannot be a necessary condition for a presumption of prejudice, inasmuch as the *Sheppard* case was tried in a large city. See Pet. 22 n.3.

B. The Court Should Grant Certiorari To Decide Whether A Presumption Of Jury Prejudice Is Irrebuttable.

As the petition explains (at 26), because a presumption of jury prejudice is warranted here, this case presents the Court with an opportunity to decide the question it agreed but had no occasion to decide in *Skilling*: whether the government may rebut the presumption of prejudice. As the petition also explains (at 26-28), the lower courts are divided on that question, and this Court's decisions make clear that the presumption is irrebuttable. Finally, the petition explains (at 28-30) that, even if a presumption of prejudice were rebuttable, it could not be rebutted here. The government's arguments to the contrary lack merit.

First, the government contends that "an irrebuttable presumption cannot be justified under this Court's cases." Br. in Opp. 19. Remarkably, however, the government does not discuss—or even cite—a single one of the Court's decisions that actually presumed prejudice (*i.e.*, *Rideau*, *Estes*, and *Sheppard*). See *id.* at 19-20. Much less does it make any attempt to explain how the presumption of prejudice could be rebuttable when the Court reversed convictions on the basis of the presumption in each of these cases without any inquiry into whether the presumption was rebutted—or into actual prejudice more generally. See Pet. 27-28.

Equally remarkably, the government acknowledges this Court's repeated statement that a presumption of prejudice arises when pre-trial publicity is such that jurors' claims of impartiality "'should not be believed,'" Br. in Opp. 19 (quoting *Mu'Min* v. *Virginia*, 500 U.S. 415, 429 (1991), in turn quoting *Pat-*

ton v. *Yount*, 467 U.S. 1025, 1031 (1984)), but it would have the Court interpret that statement to mean "only that when pretrial publicity is particularly intense, the district court should conduct a more searching inquiry than usual," *id.* at 19-20. While words sometimes have a "range of possible meanings," *Taylor* v. *United States*, 495 U.S. 575, 590 (1990), "should not be believed" cannot possibly mean "may be believed as long as the inquiry is more searching than usual."

The government also cites *Neder* v. *United States*, 527 U.S. 1 (1999), for the proposition that "a rule of 'automatic reversal' is appropriate 'only in a very limited class of cases.'" Br. in Opp. 20 (quoting 527 U.S. at 8). But as the petition points out (at 28), this Court has made clear that that class of cases *includes* those involving presumed prejudice from pretrial publicity. See *Vasquez* v. *Hillery*, 474 U.S. 254, 263-264 (1986).

Second, the government argues that "petitioner cannot establish a circuit conflict warranting plenary review on th[e] issue" of whether a presumption of prejudice is rebuttable. Br. in Opp. 21. It points out that some of the cases the petition cites for the proposition that the presumption is not rebuttable "rejected the pretrial-publicity claim[] and denied relief." *Id.* at 20. But those cases rejected the claim, not because they concluded that a presumption of prejudice was rebutted, but because, as the government concedes, they determined that "no presumption at all" was warranted in the particular circumstances of the case. *Ibid.* And in describing the presumption of prejudice, the cases made clear that, when the presumption does arise, it is not subject to rebuttal. See Pet. 27 nn.6-7. The government sug-

gests no reason why future panels in the relevant circuits would not deem themselves bound by these "explications of the governing rules of law." *Allegheny Cnty.* v. *ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 668 (1989) (opinion of Kennedy, J.).

In the end, the arguments the government makes against the existence of a circuit conflict are essentially identical to those it made in opposing certiorari in *Skilling*, see Brief in Opposition at 19-22, *Skilling* v. *United States*, 130 S. Ct. 2896 (2010) (No. 08-1394), *available at* 2009 WL 2481332, and yet this Court granted review in that case to decide whether the presumption of prejudice can be rebutted, see Pet. 26. Indeed, the division in the lower courts on that issue was doubtless one of the reasons for the grant of certiorari.

Third, the government claims that this case does not "present[] a plausible vehicle to address the question" whether the presumption of prejudice is rebuttable, because the court of appeals did not decide the issue (having concluded that no presumption arose). Br. in Opp. 18. But whether the presumption of prejudice can be rebutted is not presented as a stand-alone question in this case. The petition asks the Court to decide whether the presumption arises here, "and, if so, whether a presumption of jury prejudice is irrebuttable." Pet. i.

If the Court granted review and agreed with the court of appeals that prejudice should not be presumed, it obviously would have no occasion to decide whether the presumption could be rebutted. That is what happened in *Skilling*. But if the Court decided that prejudice *should* be presumed, there is no reason why it could not then decide whether the presumption is subject to rebuttal. That is a pure ques-

tion of law, and closely bound up with the question whether a presumption arises in the first place. If the Court decided that the presumption was irrebuttable, that would be the end of the case. If it decided otherwise, the Court could either examine the record to determine whether the presumption was rebutted or remand to allow the lower courts to decide that issue in the first instance.

C. At The Very Least, The Court Should Grant The Petition, Vacate The Judgment Below, And Remand For Further Consideration In Light Of *Skilling*.

As the petition explains (at 30-32), if the Court does not grant plenary review, it should grant certiorari, vacate the judgment below, and remand the case (GVR) for further consideration in light of *Skilling*. The government contends that a GVR order is not warranted because "the court of appeals rejected petitioner's claim for reasons quite similar to those this Court gave in rejecting Skilling's claim." Br. in Opp. 17. But that is simply not correct.

Skilling was the first decision of this Court to systematically describe the factors that are relevant in determining whether pre-trial publicity gives rise to a presumption of jury prejudice. Because *Skilling* postdated the court of appeals' decision in this case, that court rendered its decision without the benefit of the factors *Skilling* identified. The court of appeals did not apply these factors. Nor did it apply "similar" factors. Indeed, as far as the issue of presumed prejudice is concerned, the court of appeals did not apply *any* factors. See Pet. 22, 30. It simply stated that "[c]ases presenting this scenario are very rare" and that "the character of the publicity" in this case did not warrant the presumption. Pet. App.

22a, 24a. That was the sum and substance of its analysis.

The government is therefore mistaken in its assertion that the court of appeals "applied the appropriate standard." Br. in Opp. 12. And this is thus precisely the sort of case in which a GVR order—at the very least—is warranted. Such an order would guarantee petitioner "full and fair consideration of h[er] rights in light of all pertinent considerations" while "respect[ing] the dignity of the Court of Appeals by enabling it to consider *** [a] relevant decision[] *** that w[as] not previously before it." *Stutson* v. *United States*, 516 U.S. 193, 197 (1996) (per curiam).

CONCLUSION

The petition for a writ of certiorari should be granted and the case set for plenary review. In the alternative, the petition should be granted, the judgment of the court of appeals vacated, and the case remanded for further consideration in light of *Skilling* v. *United States*, 130 S. Ct. 2896 (2010).

Respectfully submitted.

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